

भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 46]

नई दिल्ली, शनिवार, नवम्बर 16, 1968/कार्तिक 25, 1890

No. 45]

NEW DELHI, SATURDAY, NOVEMBER 16, 1968/KARTIKA 25, 1890

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उपखण्ड (ii)

PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़ कर)

केन्द्रीय प्राधिकरणों द्वारा जारी किए गए विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 2nd November 1968

S.O. 3979.—Whereas in pursuance of the exchange of letters between the Government of India and the League of Arab States, it is necessary to accord to the said League of Arab States and its representatives and officers, privileges and immunities in India similar to those contained in the provisions set out in sections 18 and 19 in the Schedule to the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947);

And whereas, the Central Government considers that for the purpose of giving effect to the said exchange of letters, it is expedient that the said sections 18 and 19 of the Schedule to the said Act shall apply to the League of Arab States subject to the modifications specified below:

Now therefore, in exercise of the powers conferred by section 3 of the United Nations (Privileges and Immunities) Act, 1947, and in supersession of the notification of the Government of India in the Ministry of External Affairs No. MI-104(89)/65 dated the 9th August, 1965, the Central Government hereby declares that the provisions of sections 18 and 19 of the Schedule to the said Act, shall apply *mutatis mutandis* to the

office of the League of Arab States in India and to its representatives and officers subject to the following modification namely:—

MODIFICATION

In the Schedule to the said Act,—

- (i) in section 18, for the words "Officials of the United Nations", the words "Chief Representative and other officials of the office of the League of Arab States in India" shall be substituted;
- (ii) in section 19, after the words "the Secretary-General and all Assistant Secretaries-General", the words "of the League of Arab States" shall be inserted.

[No. DII-451/68(16/4).]

By Order and in the name of the President of India.

B. A. RAJAGOPALAN, Dy. Ch. of Protocol.

विदेश मंत्रालय

नई दिल्ली, 2 नवम्बर 1968

एस० नो० 3980. — भारत सरकार और अरब राज्य संघ के बीच पत्रों का जो आदान-प्रदान हुआ है उसके अनुसार जबकि यह आवश्यक है कि उक्त अरब राज्य संघ को और उसके प्रतिनिधियों तथा अधिकारियों को भारत में वैसी ही सुविधाएं और उन्मुक्तियां प्रदान की जाएं जैसी कि संयुक्त राष्ट्र (सुविधाएं और उन्मुक्तियां) अधिनियम, 1947 (1947 का 46) की अनुसूची के धारा 18 और 19 की व्यवस्थाओं में निहित हैं;

और जबकि केन्द्र सरकार यह समझती है कि पत्रों के उक्त आदान-प्रदान को कारगर रूप देने के उद्देश्य से यह आवश्यक है कि उक्त अधिनियम की अनुसूची की धाराएं 18 और 19 अरब राज्य संघ पर निम्नलिखित संशोधन के साथ लागू हों;

इसलिए, अब, संयुक्त राष्ट्र (सुविधाएं और उन्मुक्तियां) अधिनियम 1947 की धारा 3 द्वारा प्रदत्त अधिकारों का प्रयोग करते हुए और भारत सरकार, विदेश मंत्रालय की अधिसूचना संख्या एम० 1-104 (89/65, दिनांक 9 अगस्त 1965 के अधिक्रम में, केन्द्र सरकार इसके द्वारा घोषित करती है कि उक्त अधिनियम की अनुसूची के 18 और 19 धाराओं की व्यवस्थाएं, आवश्यक परिवर्तनों के साथ, भारत में अरब राज्य संघ के कार्यालय पर और इसके प्रतिनिधियों तथा अधिकारियों पर निम्नलिखित संशोधनों के साथ लागू होंगी, यथा :—

संशोधन

उक्त अधिनियम की अनुसूची में —

1. धारा 18 में लिखित "संयुक्त राष्ट्र के कर्मचारियों" के स्थान पर, "भारत में अरब राज्य संघ में कार्यालय के मुख्य प्रतिनिधि और अन्य कर्मचारी" पढ़ा जाए;

2. धारा 19 में लिखित शब्द "महासचिव और सभी सहायक महासचिव" के पहले "अरब राज्य संघ के," जोड़ दिया जाए।

[न० जी II-451/68(16/4).]

भारत के राष्ट्रपति के नाम में और उनके आदेश से,

बी० ए० राजागोपालन,

उप नयान्तर प्रमुख।

ELECTION COMMISSION OF INDIA

New Delhi, the 17th July 1968

S.O. 3981.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the judgment delivered on the 12th January, 1968 by the High Court, Bombay in Election Petition No. 6 of 1967.

HIGH COURT, ORIGINAL SIDE

ELECTION PETITION No. 6 of 1967

Versus

George Fernandes and Others—*Respondents*.

Mr. R. Jethmalani with Mr. N. H. Gursahani,

Mr. Shamrao Samant, Mr. S. P. Kanuga,

Mr. S. H. Gursahani—for the petitioner.

Mr. Porus Mehta with Mr. V. D. Mangde,

Mr. S. B. Naik, Mr. Kumar Mehta and

Mr. S. V. Vaidya instructed by Messrs Sukhthankar and

Gupte, Attorneys-at-Law—*For Respondent No. 1.*

Mr. K. S. Cooper with Mr. S. T. Tijoriwala,

Mrs. M. K. Cooper and Mr. R. N. Vakharia
instructed by Messrs. Nanavati Tijoriwala and Co.,
Attorneys-at-Law—for Respondent No. 2.

Mrs. C. K. Bengeri—for Respondent No. 3.

Mr. S. M. Naik, Advocate—for Respondent No. 10.

Date of decision

29th January, 1968

CORAM: KANTAWALA, J.

12th January, 1968

ORAL JUDGMENT

The election to the House of the People from Bombay (South) constituency was held on February 21, 1967. Eight candidates contested the seat from this constituency at the election. Respondent No. 1 George Fernandes and respondent No. 2 S. K. Patil were two of these candidates. The result of the election was declared on February 24, 1967. Respondent No. 1 was declared the successful candidate, he having secured the largest number of votes, viz., 1,47,841. Respondent No. 2 secured the next highest number of votes, he having secured 1,18,407 votes. The remaining six candidates secured comparatively much lesser number of votes. The petitioner Samant Nikanth Balkrishna an elector being entitled to vote at the election has filed this election petition on April 7, 1967 for a declaration that two election of respondent No. 1 to the House of the People is void.

The petitioner has challenged the validity of election of respondent No. 1 on the grounds set out in section 100(1)(b), section 100(1)(d)(ii) and section 100(1)(d)(iv) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act").

The case of the petitioner is that corrupt practices under section 123(3), section 123(3A) and section 123(4) of the Act are committed by respondent No. 1 himself or his agents or by some other person with his consent. A corrupt

practice under section (123(3) of the Act is, according to the petitioner, committed by using cow as a religious symbol for the furtherance of the prospects of the election of respondent No. 1 or, at any rate, for prejudicially affecting the election of respondent No. 2. In the petition no particulars whatsoever are furnished of the use of cow as such religious symbol, but at the trial such use was restricted to only two instances. The first instance of such corrupt practice relied upon at the hearing is by reason of publication of a cartoon and a poem (Ex-16) respectively with the heading "The cow is my mother, do not kill her. The pig is my father, do not kill him." and "Wailing of Sadoba, the son of a pig." in the issue of *Maratha* dated December 31, 1966. The second instance of this corrupt practice, according to the petitioner, is as a result of a statement made by Jagadguru Shankaracharya of the Puri Peeth at a press conference held in Bombay on February 16, 1967. The commission of corrupt practice under section 123(3A) of the Act is pleaded in paragraph 20 of the petition. In this paragraph the case of the petitioner is that in a number of published speeches made by respondent No. 1 and his workers with his knowledge and consent, it was alleged that respondent No. 2 was an enemy of Muslims and Christians inasmuch as respondent No. 2 had professed to discourage the slaughter of cows; respondent No. 1 and his workers thus promoted or attempted to promote feelings of enmity and hatred between the Muslim and Christian voters of the constituency and respondent No. 2 and his workers; that it was alleged that respondent No. 2 was interfering with articles of Christian and Muslim faith and that it was an attempt on the part of respondent No. 2 to drive the Muslims away to Pakistan and to deprive the Muslims and Christians of their staple diet. No particulars whatsoever are given in the petition as regards the time when or the place where such speeches were made by respondent No. 1 and his workers with his knowledge and consent. The corrupt practice under section 123(4) of the Act referred to in the petition and relied upon at the trial can be divided into three categories. The first category consists of publication of false statements by respondent No. 1 himself in relation to the personal character and conduct of respondent No. 2. Four instances of this category were relied upon at the trial. The first instance relates to an article written by respondent No. 1 himself and published in the issue of *Blitz* dated November 5, 1966, the second instance of this category relates to the speech made by respondent No. 1 at a public meeting held at Shivaji Park on January 31, 1967, the third instance is furnished by the statements made by respondent No. 1 at a press conference held at Bristol Grill Restaurant on February 9, 1962 and the fourth instance is furnished by the speech made by respondent No. 1 at a public meeting held at Sabu Sidiq Chawl on February 10, 1967. The second category of the corrupt practice under section 123(4) of the Act consists of the speech made by a person other than respondent No. 1 but in the immediate presence of respondent No. 1 himself. There is only one instance relied upon in this behalf and that is furnished by a speech made by Mr. Madhu Limaye at a public meeting held at Chowpaty on January 8, 1967. This speech was made by Mr. Madhu Limaye in the presence of respondent No. 1 who presided over this meeting. The third category of corrupt practice under section 123(4) of the Act consists of statements made or published by persons other than respondent No. 1 or his election agents. These statements are not made or published in their immediate presence. These statements can be sub-divided into two sub-categories. The first sub-category consists of various false statements published by Acharya Atrc, the editor, printer and published of the newspaper *Maratha* in relation to the personal character and conduct of respondent No. 2 from time to time. The second sub-category relates to statements made by Shri Jagadguru Shankaracharya of Puri Peeth at a press conference held in Bombay on February 16, 1967. It is the case of the petitioner that at this press conference, Shri Jagadguru Shankaracharya implicated that respondent No. 2 had a hand in the riots that took place at Delhi on November 7, 1966 in the course of which, an arson was committed at the house of the Congress President. At this press conference, Shri Jagadguru Shankaracharya also described respondent No. 2 as a hypocrite because of his pretended support for imposing ban on cow slaughter.

The allegations about non-compliance with the provisions of the Constitution of India and of the Act and the Rules and the Orders made under the Act are made in paragraphs 2A, 2B, 2C, 2D and 2E of the petition. The contention in paragraph 2A is that the voting at every polling booth had taken place in accordance with the provisions of Rule 38(2) of the Conduct of Election Rules, 1961, that the practice so adopted was in violation of the required secrecy of ballot, that the procedure prescribed by Rule 38(3) is repugnant to the provisions of section 59 of the Act and that this has, therefore, vitiated the election. The contention in paragraph 2B is that a large number of voters who were on the roll of voters in the Bombay (South) Parliamentary constituency were registered as

voters in other constituencies, that "such voters exercised their franchise at more than one constituency and this has materially affected the result of the election. In paragraph 2(C) the grievance made is that there were a large number of persons who were competent to vote at the election, but their names were not entered in the electoral roll. The scale on which this happened and other circumstances attendant on the omission of the names of such voters in the electoral roll indicated a definite plan to destroy the electoral right of a large number of voters and to make a mockery of adult suffrage prescribed by Article 326 of the Constitution. This has materially affected the result of the election. The contention in paragraph 2D is that a large number of persons who are dead or non-existent or, at any rate, did not satisfy the residence qualifications were introduced in the electoral roll as electors and there were thus about 20,000 voters introduced as bogus voters in the electoral roll. In paragraph 2K grievance is made as regards the manner in which electoral roll was prepared. It is alleged that a sufficient number of enumerators was not appointed for preparation of the electoral roll and some of those who were appointed discontinued their work after some time. Thus a large number of voters who were duly qualified to vote were not registered as voters on the electoral roll. By this contravention, according to the petitioner, the result of the election has been materially affected.

Respondent No. 1 by his written statement and two supplementary written statements denied the existence of any ground for declaring the election to be void. He denied the commission of any corrupt practice either by himself or by any other person as his agent or with his consent. Respondent No. 2 by his written statement has adopted the contentions of the petitioner in the petition and at the trial has supported the case of the petitioner. No other respondents have taken at the trial part in the proceedings of this petition.

Before investigating the allegations of corrupt practice alleged by the petitioner, it will be necessary to consider the principles which govern proceedings to challenge the election of a returned candidate. Under the Act an election petition can be presented by any candidate at the election or by any elector in accordance with the provisions of part VI of the Act. Section 83 enjoins upon a petitioner who has filed an election petition to set forth full particulars of any corrupt practice that the petitioner alleges including as full statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and the place of the commission of each such practice. The requirement of giving full particulars regarding the corrupt practice has got to be complied with sufficient fullness and clarification so as to enable the opposite party fairly to meet them and that they must be such as not to turn the enquiry before the Court into a rambling and roving inquisition. The primary responsibility of furnishing full particulars of the alleged corrupt practice and to file a petition in compliance with the provisions of section 83 of the Act is on the petitioner. He cannot take shelter behind the fact that neither the Court nor the respondent has in terms called upon him to furnish better particulars. Some of the averments made in the present petition are rather very vague and the petition is drafted ignoring altogether the provisions of section 83(1)(b) of the Act.

Section 87 of the Act prescribes the procedure to be followed by the High Court for trial of the election petition. It states that subject to the provisions of the Act and of any Rules made thereunder, every election petition has to be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. Under Order 18 Rule 2 of the Code of Civil Procedure a party having the right to begin has to state its case fully before he starts leading evidence in support of the issues which he is bound to prove. However, in the present case, the case of the petitioner was stated in the briefest and the shortest possible manner before the evidence started. This enabled the petitioner to improve his case even in a manner not contemplated at the time when the petition was filed or the hearing of the petition commenced. This also resulted in respondent No. 1 being taken by surprise on several grounds during the course of the trial.

At the trial no evidence is led on behalf of the petitioner to support the contentions raised in paragraphs 2A, 2B, 2C, 2D, 2G and 2K of the petition, nor was any submission made at the time of the arguments to support these pleas. These paragraphs deal with the corrupt practice under section 123(3A) of the Act and the instances of the non-compliance with the provisions of the Constitution of

India, the Act and the Rules and the Orders made under the Act. These contentions are, therefore, deemed to have been given up and the issues arising therefrom will have to be answered against the petitioner. There remains for consideration only the corrupt practices under section 123(4) and section 123(3) of the Act.

The first instance of the corrupt practice under section 123(4) of the Act relates to an article (Ex. 57) written by respondent No. 1 and published in the issue of weekly *Blitz* dated November 5, 1966. The fact that this article is written by respondent No. 1 is not disputed either in the pleading or at the trial. So far as this publication is concerned, two things are relied upon by the petitioner in paragraph 2L of the petition as constituting corrupt practice under section 123(4) of the Act. It is alleged that this article showed a photograph of respondent No. 1 and a photograph of respondent No. 2 at the top of the article and by the captions printed under these photographs, respondent No. 1 was shown as involved in a fight against political thuggery in the manner suggesting that respondent No. 2 is a political thug. The second thing which is relied upon as constituting the corrupt practice is a passage which is quoted in paragraph 2L as under:

"These men (including the second respondent) form the hard core of the coterie which controls the destinies of the nation, even decides who should be the Prime Minister and who should not be, hounds out the few honest Congressmen from public life, props up the Amichand Pyarelals and Chamanlals and supports them in all their misdeeds and puts a premium on dishonest businessmen and industrialists."

The contention of respondent No. 1 as regards the photographs and the captions thereunder is that when he furnished the article to the editor of *Blitz* he has neither provided the photographs nor furnished the captions to be written thereunder. It is his contention that these captions are not written by him, but they are written by the editor.

The case of the petitioner as regards the passage quoted in paragraph 2L of the petition is that the reference to Amichand Pyarelals therein contains a clear insinuation that respondent No. 2 is behind the alleged Amichand Pyarelal fraud; it is well known that the allegation against Amichand Pyarelal was that they had entered into conspiracy to defraud the Government of India by charging the Government of India for rice bags which never arrived from Burma; that the said allegation is to tally false; that, in any event respondent No. 2 has had nothing to do with Amichand Pyarelal or any of their associate concerns or the said bags of rice or charges in respect thereof. The contention of the petitioner is that the allegations quoted in paragraph 2L of the petition amount to saying that respondent No. 2 is dishonest to the extent of helping in cheating the very Government of which he (respondent No. 2) was a member. The petitioner has pleaded that very wide publicity was given to the said false allegation and that inevitably must have affected the result of the election.

It is the contention of respondent No. 1 that the publication of the passage quoted in paragraph 2L of the petition is not the publication of a statement of fact, but it is merely an expression of opinion about the coterie in the Congress in the context of the entire article; that the statements contained in the passage relied upon are not proved to be false; that, in any event, respondent No. 1 believed the said statements to be true or, at any rate, did not believe them to be false; that it is the case of the petitioner that the passage quoted in paragraph 2L of the petition is in relation to the personal character and conduct of respondent No. 2 because it contains an insinuation that respondent No. 2 is behind the alleged Amichand Pyarelal fraud; that the insinuation suggested on behalf of the petitioner is not proper and is not justified and warranted by the facts established as existing on the day on which the article (Ex. 57) was written or published; that on the day this article was written or published, no body had alleged or implicated that respondent No. 2 was associated with Amichand Pyarelal fraud in cheating the Government in respect of the rice bags deal, much less alleged that he (respondent No. 2) was party to such conspiracy engineered by Amichand Pyarelal; that, therefore, the charge levelled against respondent No. 1 in paragraph 2L is not established. The further contention of respondent No. 1 is that the criticism made in the passage relied upon is against the Congress organization and its coterie and is not against respondent No. 2; that the article should be read as a whole and in the context of the two other articles (Exs.

62 and 63) that followed it; that reading the article in this manner will show that it is a political criticism of the Congress party and not of respondent No. 2; that no allegations in relation to the private or personal character or conduct of respondent No. 2 are made; that no allegation is made that he is misappropriating funds or enriching himself by dishonest or corrupt means. The argument of respondent No. 1 further is that on the day this article was written or published, respondent No. 2 had not held himself out as a candidate, and, therefore, the article is not in relation to the personal character or conduct of any candidate. Lastly, the contention is that the passage relied upon is not reasonably calculated to prejudice the prospects of respondent No. 2's election.

Before examining the facts in connection with this corrupt practice, it is important to bear in mind the nature of the present proceedings, the standard of proof required to bring home the charge to the returned candidate and the manner of approach to the problem.

When a court deals with allegations about the commission of corrupt practice by a returned candidate, the charges framed are in the nature of quasi-criminal charges. The proof of the charge has a double consequence: the election of the returned candidate is set aside and he incurs subsequent disqualification as well. Therefore when a charge of this nature is framed against a returned candidate, it has to be proved satisfactorily. It should not be overlooked that the onus to prove the essential ingredients of section 123(4) is on the petitioner and so it would be for him to prove that a statement is false and that the other requirements of the section are satisfied. Having regard to the nature of the corrupt practice which is prescribed by section 123(4), it is now well settled that the strict rule of pleadings prescribed by Order 8 Rule 5 of the Code is not to be blindly invoked in election proceedings of this type. (See *Jagjit Singh v. Giant Kartar Singh and others* A.I.R. 1966 Supreme Court 773.)

It may be remembered that in the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election, lies heavily upon the petitioner to establish his case, and unless it is established in both these branches, i.e. the commission of acts which law regards as corrupt, and the responsibility of the successful candidate directly or through his agents or with his consent for its practice not by mere preponderance of probability but by cogent and reliable evidence beyond any reasonable doubt, the petition must fail. The evidence in the case has to be examined bearing this approach to the evidence in mind.

In *S. Kundaswami v. S. B. Adityan and others*, A.I.R. 1966 Madras 170 the Court had occasion to consider the nature of the trial of the election petition. While considering this question it is pointed out: The trial in an election petition is a quasi-criminal trial and not a civil trial. The standard of proof in an election enquiry is the same as in a criminal trial. The onus of establishing a corrupt practice beyond reasonable doubt rests heavily on the person who challenges the election. No doubt, the procedure followed in enquiries in election petitions is civil in form, but in substance, it is a criminal trial, especially when one keeps in view the results and consequences that follow from the decisions in election petitions. Simply because the procedure to be followed is civil in form, it cannot be contended that the amount of proof required for bringing the charges home to the person against whom the accusation is made is reduced to that of an enquiry in a purely civil proceeding so as to give room for the theory of the balance of probabilities or the shifting of the burden. The object of an enquiry in an election petition is mostly punitive, though it may not be wholly so. It is not open to the person to contend that if he has proved a *prima facie* case against a candidate, it is for the candidate to rebut the *prima facie* case made out against him.

The necessity of proving the charge beyond reasonable doubt has also been emphasized in the case of *Lachman Singh Gill v. Bibi Harparkash Kaur*, A.I.R. 1960 Punjab 395. It is there said: The onus of proving corrupt practices lies on those who assert their commission and they have to be established beyond the possibility of a reasonable doubt. The evidence in their support need not necessarily be direct, but the circumstantial evidence and the inferences deducible therefrom must be such as to lead to the only reasonable conclusion of the commission of the corrupt practice alleged. No conjecture or surmise, however attractive or even plausible, can take the place of proof and if two equally

reasonable inferences or conclusions are possible, one innocent and the other guilty, the former should normally prevail.

While dealing with the nature of burden of proof in a petition filed by unsuccessful candidate to challenge the election of the returned candidate, in *Ganji Reddy v. Anjaneya Reddy*, (1965) 22 election Law Reports 261. The Supreme Court pointed out: The burden of proof has two distinct meanings, viz., (i) the burden of proof as a matter of law and pleading and (ii) the burden of proof as a matter of adducing evidence. Section 101 of the Evidence Act deals with the former and section 102 with the latter. The first remains constant and the second shifts. In an election petition the burden of proving that certain statements alleged to have been published by the respondent were false and that the respondent knew them to be false or did not believe them to be true is, in the first instance, on the petitioner. But if the petitioner examines himself and states that he has not committed the alleged acts and proves circumstances indicating a motive on the part of the respondent to make false allegations against him, the Court is entitled to accept his evidence and if it does so, the onus would shift to the respondent to prove the circumstances, if any, to dislodge the assertion made by the petitioner and if the respondent has failed to put before the Court any fact to establish either that the petitioner did in fact commit the acts of violence in the past or to give any other circumstances which made him bona fide believe that he was so guilty, the Court is entitled to say that the burden of providing the necessary facts has been discharged by the petitioner.

In considering the question as to whether a particular publication made by a candidate or his agent or with his consent falls within the mischief of section 123(4), Courts should not be astute to read into the words used in the publication anything more than can be attributed to them on its fair and reasonable construction. The principles which have to be applied in construing such a document are well settled. The document must be read as a whole and its purport and effect determined in a fair, objective and reasonable manner. In reading such documents, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language or the adoption of metaphors, and the extravagance of expression in attacking one another, are all a part of the game; and so, when the question about the effect of speeches delivered at election meetings or articles published during election period is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or articles must be construed in that light. In doing so, however, it would be unreasonable to ignore the question as to what the effect of the said speech or article would be on the mind of the elector or voter, who attends such meetings or reads such articles or hears the speeches. (*See Kultar Singh, v. Mukhtiar Singh*, A.I.R. 1965 Supreme Court 141.)

That such is the proper approach for construing speeches or articles is again emphasised in the case of *Jagdev Singh Sidhanti v. Pratap Singh Daulta and others*, A.I.R. 1965 Supreme Court 183. It is there said that speeches made at political meetings held for canvassing votes must be examined in the context of the atmosphere of a political campaign and the passions which are generally aroused in such a campaign. In adjudging whether the appeal is made in the language of the candidate, a meticulous examination of the text of the speech in the scene atmosphere of the Court room picking out a word here and a phrase there to make out an offending appeal to vote for or against a candidate on the ground of language would not be permissible.

Section 123 of the Act sets out what the diverse corrupt practices recognised by the Act are. Clause (4) defines a corrupt practice by publication of false statement calculated to prejudice the prospects of a candidate's election. To bring a corrupt practice within the purview of clause (4), there must be a publication by a candidate or his agent or by another person with the consent of the candidate or his election agent: the publication must contain a statement of fact which is false and which the candidate believes to be false or does not believe to be true, the statement must be in relation to the personal character or conduct of the candidate and it must be reasonably calculated to prejudice the prospects of the candidate's election. The expression "statement of fact" in section 123(4) includes not only an express imputation but also an innuendo if one such may reasonably be raised from the language in which it is couched and the manner of its publication.

Article (Ex. 57) is one in a series of three articles published in the issues of *Blitz* from time to time. Article (Ex. 57), a quotation from which is relied upon as constituting the corrupt practice under section 123(4) was published in the issue of *Blitz* dated November 5, 1966. The second article that is published in the this series is Ex. 62 and it is published in the issue of *Blitz* dated November 26, 1966. This article primarily deals with the criticism of the food policy of the Government under the various PL 480 agreements with America. The third article in this series is Ex. 63 and it is published in the issue of *Blitz* dated December 24, 1966. Ex. 63 deals with administration of railways during the time respondent No. 2 was the Minister of Railways in the Central Government. It is not the case of the petitioner that in Ex. 62 or Ex. 63 there is any publication of a statement of fact which is false in relation to the personal character or conduct of respondent No. 2. It is only the quotation from Ex. 57 that is relied upon as constituting the corrupt practice under section 123(4).

Ex. 57 is a long article consisting of about 22 paragraphs. It is headed "Why I am fighting Patil". At the top of this article in the left hand column, there is a photo of respondent No. 1 with a caption "George Fernandes Fight against.....". In the right hand column, there is a photo of respondent No. 1 with a caption "Sadoba Patil..... Political thuggery". Paragraphs 1 to 7 of this article deal with the question why respondent No. 1 is fighting respondent No. 2 and the question — the myth that respondent No. 2 cannot be defeated at the election can be exploded. Paragraphs 8 to 14 deal with the situation in the country under uninterrupted Congress rule for a period of nearly 19 years. Paragraphs 15 and 16 thereof deal with the coterie that exists in the Congress and the persons who constitute the hard core thereof. The remaining paragraphs 17 to 22 deal with respondent No. 2. Thus in the first part, viz., paragraphs 1 to 7 respondent No. 1 gives his reason for having chosen to fight respondent No. 2 in a risky area deliberately. In these paragraphs he has pointed out that in the past elections out of four and a half lakh voters in this constituency, respondent No. 2 only secured about one and a half lac votes and nearly three lakh voters did not consider him worthy of their votes. He has also pointed out that even those who voted for respondent No. 2 in the past elections would not now vote for him in the 1967 elections. He has stated:

"I would like to rally these voters and shatter the myth that our voters are so backward that they can be persuaded to vote against themselves by political thuggery and corruption. And while doing this revive and restore the lost faith of the people in the parliamentary system which Patil has so successfully undermined by his politics."

In the subsequent paragraphs he has emphasised that the fight at the election is not really between the two respondents but that it would be a fight between the electors of South Bombay and respondent No. 2 and that he had no doubt in his mind that the people would win. In paragraph 8 he has expressed his views in connection with the country finding itself in economic ruin, morally decayed and in political chaos after 19 years of uninterrupted Congress rule. He has referred to the various problems that exist in the country, viz., unemployment, rise in prices, falling standards of living and the poor purchasing power of the rupee after the country became free. In paragraph 10 he has dealt with the absence of national character, he has referred to the talk of corruption and bribery, nepotism and favouritism, jobbery and how people associate Ministers' names with the cancer of corruption that is eating into the vitals of the country. In paragraph 12 he has dealt with how the minds of the people are agitated at the fraud perpetrated by continuing the emergency and the Defence of India Rules, how these Rules are used to suppress opposition parties and trade union workers and to harass and browbeat traders and shopkeepers. In paragraph 13 he has dealt with the question of poverty in the country and how sometimes parents come forward to sell their children for a paltry sum of Rs. 5 to save themselves from starvation. In paragraph 14 he has dealt with the feelings of the students, the housing problem and the illiteracy prevailing in the country. Paragraphs 15 and 16 of the article are as under:

"While it is necessary that the Congress Party be defeated in the forthcoming elections if the country is to be pulled out of the morass into which it has sunk, it is imperative that men like S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy, who represent the most reactionary and degenerate elements in the ruling party be definitely trounced.

The Worst in our Public Life

These men form the hard core of the coterie which controls the destinies of the nation, even decides who should be the Prime Minister and

who should not be, hounds out the few honest Congressmen from public life, props up the Aminchand Pyarelals and Chamanlals and supports them in all their misdeeds and puts a premium on dishonest businessmen and industrialists."

The remaining paragraphs in this article only refer to respondent No. 2. In paragraph 17 respondent No. 1 has stated that respondent No. 2 is the boss of the political gang that is today taking the country down the drain and his defeat at the poll will deal a mortal blow to all those who stand for the worst in our public life. In paragraph 18 respondent No. 1 has stated that the Congress Party has always been many things to many men, but to respondent No. 2 it has been the instrument to amass personal power in the manner of a Tammany Hall boss-power, not for the fulfilment of the aspirations of the masses but to provide help and succour to the exploiting classes in the country. In paragraph 19 respondent No. 1 has described respondent No. 2 as the uncrowned King of Bombay who has never cared to find a solution to the housing problem of the city. In paragraph 20 he has referred to the failures of respondent No. 2 while he was the Mayor of Bombay for nearly three terms and while he occupied a prominent position in the Bombay Pradesh Congress Committee for nearly two decades. In paragraph 21 respondent No. 1 has stated that respondent No. 2 who, even as a Minister in the Central cabinet, spends three days in a week in Bombay has time for the wealthy men and for their many rackets that operate from the Taj and Ritz Banquet halls; the people of Girgaum and Kalbadevi, of Parel and Khetwadi, of Ghatkopar and Jogeshwari just do not exist for him except as mere powers to be used during the elections. In paragraph 22 respondent No. 1 has completed this article by stating that respondent No. 2 does not love the country and its people.

As regards the photographs and the captions under them, the case of respondent No. 1 is that he has neither furnished the photographs nor written the captions under the photographs nor even written the various sub-heads which are printed in several places in the articles. The original article that was sent by respondent No. 1 to the editor of *Blitz* is not produced; however, respondent No. 1's evidence in this behalf is not challenged. Respondent No. 1 in his evidence stated that he had merely sent the article to the *Blitz* and in this article there were no sub-headings, nor were there any photographs, nor were any captions written against those photographs. There is no cross-examination of respondent No. 1 on this evidence. It also appears from the evidence of respondent No. 2 that this part of the case of respondent No. 1 has not been seriously challenged. Respondent No. 2 has admitted in his evidence that the editor of the newspaper *Blitz* has put the caption below his photograph. He has, however, given the reason why the editor did so. Respondent No. 1 has actually used the words "political thuggery" in the article and the editor has chosen to pick up those words as a caption below his photograph. This evidence, therefore, shows that it is the editor of the newspaper who has put the caption below the two photographs of respondent No. 1 and Respondent No. 2, and respondent No. 1 cannot be held responsible for what the editor did while putting the caption. It is not the petitioner's case that in putting the caption, the editor of the newspaper *Blitz* was acting as the agent of respondent No. 1 or he put those captions with the consent of respondent No. 1.

There is a serious controversy between the parties as regards the persons to whom the passage quoted in paragraph 2L of the petition refers. It is the contention of the petitioner that it refers to persons named in the previous paragraph, viz., S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy and specially to respondent No. 2 who is described as the boss of the political gangs in the subsequent paragraph. The contention, on the other hand, on behalf of respondent No. 1 is that the various characteristics which are set out in the passage quoted in paragraph 2L are the attributes of the coterie that exists in the Congress organisations and they are not the attributes or characteristics of the four individuals whose names are specified in the previous paragraph 15 of the article. In the alternative, the contention is that even if these characteristics are not the attributes of the coterie, they, in any event, are the attributes of the hard core of the coterie. Men like S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy form the hard core and they are not the characteristics of these four individual persons whose names are already mentioned in the previous paragraph.

The petitioner in his evidence stated that on reading the article (Ex. 57), he carried an impression that respondent No. 2 was associated with Amichand Pyarelal in a conspiracy to defraud Government because it is stated in this article that these men (i.e., S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy) prop up the Amichand Pyarelals and Chamanlals, support them in all their misdeeds and put a premium on dishonest businessmen and industrialists. According to the petitioner, in the phrase "hard core of the coterie which controls," the word 'which' goes with the "hard core" and not with the 'coterie'. He added that anyone who had knowledge about the activities of Amichand Pyarelal will positively come to the conclusion that respondent No. 2 had a hand with Amichand Pyarelal in a conspiracy to defraud the Government.

Respondent No. 2 in his evidence stated that in paragraph 15, the names of leaders including himself are mentioned in the passage quoted in paragraph 2L of the petition. The words "these men" refer to S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy and it is they who do the various things which are mentioned in the said paragraph, viz., control the destinies of the nation, decide who should be the Prime Minister and who should not be, hound out the few honest Congressmen from public life, prop up the Amichand Pyarelals and Chamanlals and support them in all their misdeeds and put a premium on dishonest businessmen and industrialists. According to him, the other three men Atulya Ghosh, Biju Patnaik and Sanjiva Reddy had nothing to do with Amichand Pyarelal, to the best of his knowledge. Therefore, the insinuation is a direct charge that he did the various things which are therein mentioned and the other three names have been thrown there as cannon fodder. He, however, added that "Atulya Ghosh, Biju Patnaik and Sanjiva Reddy" might come while considering the words "controls the destinies of the nation, even decide who should be the Prime Minister and who should not be, hounds out the few Congressmen from public life," but only his name was associated with Amichand Pyarelal on a true interpretation of this extract.

This interpretation given by the petitioner and respondent No. 2 of the passage quoted in paragraph 2L of the petition is against the grammatical construction of the words used. In interpreting the words used in the article, the Court should not be astute to read into the words anything more than can be attributed to them on its fair and reasonable construction. All the adjectival clauses after the word 'coterie' in this article go with the word 'coterie' and what is sought to be conveyed is that men like S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy form the hard core of such coterie. If it was the intention of respondent No. 1 to refer these characteristics and attributes to the four individuals specified in the earlier paragraph, there was no necessity to refer to the coterie and this hard core. On a normal interpretation, the words "which controls the destinies of the nation, even decides who should be the Prime Minister and who should not be, hounds out the few honest Congressmen from public life, props up the Amichand Pyarelals and Chamanlals and supports them in all their misdeeds and puts a premium on dishonest businessmen and industrialists" are the attributes or characteristics, according to respondent No. 1, of the coterie that exists in the Congress organisation.

At one stage, the existence of such a coterie was sought to be denied, but the circumstances, brought on record clearly point to the existence of such a coterie in the Congress organisation. Respondent No. 1 in his evidence stated that 'coterie' means a group of people. The word 'coterie' is not necessarily used for a group of persons who are associated for illegal or corrupt practice. He said that he was not certain whether the word 'coterie' was used in the sense suggested. He used the word 'coterie' in this article because that is how Humayun Kabir described the group that existed in the Congress party in his letter to the President of the Congress just before he resigned from the Congress. He said that he was not aware that the word 'coterie' carried the element of disapprobation or that it was synonym with the word 'clique.' In the Oxford Concise Dictionary the meaning of the word 'coterie' is given as "circle, set, of persons associated by exclusive interest; select circle in society." Ordinarily, an element of disapprobation is, therefore, not inherent in the word 'coterie.'

It appears from newspaper reports that are brought on record that the press in this country used to take notice of the existence of a syndicate in the Congress. The weekly Current in its issue dated February 4, 1967 published a report in connection with the election of Prime Minister by the party in power, viz., the Congress in the Central Government. The relevant extract thereof is

Ex. 156. This report *inter alia* purports to contain a report of a statement made by respondent No. 2. In this report it is stated: "We all support her (Mrs. Gandhi) as Prime Minister. He (Respondent No. 2) said: By 'we all' he presumably meant all the members of the famous syndicate." A little later in this report, it is stated that respondent No. 2 "has not only definitely asserted the existence of the syndicate but has claimed that President Kamraj is one of its members. Whether he is or he is not, Mr. Atulya Ghosh certainly is. Mr. Patil, Mr. Ghosh and Mr. Sanjiva Reddy could be described as the hard core of the syndicate. But apparently, Mr. Patil and Mr. Ghosh have spoken in different terms." The truth of the statements in this report (Ex. 156) is not established and this extract was exhibited only for the purpose of showing that a report of the type stated in the extract was published in the issue of Current dated February 4, 1967. This extract undoubtedly shows that the reporter of the weekly Current noted the existence of a syndicate in the Congress, the existence of which, according to him was also definitely asserted by respondent No. 2.

It also appears, as stated by respondent No. 2 in his evidence, that even a headline was published in the issue of Statesman dated March 10, 1967 to the effect: "The syndicate snatches back the initiative—Intervention in leadership issue fails to help." Respondent No. 2 admits that he must have seen such a headline in this issue of the Statesman. This report and evidence, undoubtedly, go to show that some of the newspapers in this country used to describe a group of prominent leaders in the Congress organisation as "syndicate."

When the attention of respondent No. 2 was drawn to these extracts, he said: The Communist papers and fellow travellers used the word 'Syndicate' so often that once he himself said in a public meeting that there is nothing like a syndicate, but there is a majority of the Congress Working Committee which is popularly called "Congress High Command." He gave the names of about a dozen persons including Mr. Kamraj, himself, Mr. Sanjiva Reddy, Mr. Atulya Ghosh, Mr. Nijalingappa, Mr. M. K. S. Sukhadia, Mr. C. B. Gupta, Mr. D. P. Mishra and others. He said that if they called these men as Syndicate, he did not mind accepting that word.

The report of these statements made by respondent No. 2 at an interview with the correspondent of Times of India is published in the issue of Times of India dated January 16, 1967. Ex. 147 is the relevant report in Times of India in connection with the statement made by respondent No. 2 at this interview. That it is a substantially correct report of what he stated at the interview, is admitted in evidence. The report in Ex. 147 is headed "Key Role seen for Syndicate". This report shows that respondent No. 2 at the interview stated that the syndicate included Congress President Kamraj and that it would play a positive role in electing the next Prime Minister. At this interview the reporter put one of the questions to respondent No. 2 to the effect: "You (respondent No. 2) are mentioned as being an important member of the Syndicate. First tell me if there is a Syndicate." In answer to this question, respondent No. 2 stated: "The Syndicate was an expression invented by the communists and fellow-travelling journalists. Later, it was used widely. Now we do not mind it. If the Syndicate means those who elected two Prime Ministers, Mr. Shastri and Mrs. Indira Gandhi, we are proud of it." A further question was asked by the reporter to the effect: "After the elections, do you expect the Syndicate to play an important role?" The reply of respondent No. 2 was: "Of course, it will. We are like-minded people. Whatever our differences, we can adjust them. If that is what you mean by the Syndicate, it will have a wholesome influence of choosing a candidate who will ensure the continued good administration of the country."

This evidence leads to the conclusion that there is a group amongst the leaders of the Congress organisation which, in the public, was described as the 'Syndicate.' That respondent No. 2 had no objection to adopting such a word is apparent from the interview that he gave to the reporter of the Times of India. It is this Syndicate which respondent No. 1 in his evidence has described as a 'coterie' in the Congress organisation. Thus there is a group of leaders in the Congress organisation which in the press was popularly called 'Syndicate' and which respondent No. 1 in the article (Ex. 57) described as 'coterie'.

On a plain and ordinary reading of the words used in article (Ex. 57), one will have to strain too much the meaning of the words used to come to the conclusion that the words "which controls the destinies of the nation, even decides who should be the Prime Minister and who should not

be, hounds out the few honest Congressmen from public life, props up the Amichand Pyarelals and Chamanlals and supports them in all their misdeeds and puts a premium on dishonest businessmen and industrialists" are the attributes of men like S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy. By the words used, respondent No. 1 has described these to be the characteristics or the attributes of the coterie that existed in the Congress. However, respondent No. 1 has clearly stated that there is a hard core of this coterie and men like S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy form the hard core. Even if the words used are open to two reasonable constructions, one suggested on behalf of the petitioner and the other suggested on behalf of respondent No. 1, the one suggested by respondent No. 1 will have to prevail having regard to the principles which govern the trial of an election petition.

The question then arises whether the passage quoted in paragraph 2L of the petition is a publication of a statement of fact or a publication of an expression of opinion, as contended on behalf of respondent No. 1. The passage quoted shows that respondent No. 1 by using those words positively asserted the existence of a coterie. He in this passage described its attributes, dominating position and its characteristics and activities. Simply because the statement is made about a group of persons, it cannot cease to be a publication of a statement of fact and be regarded as a mere expression of opinion. The contention on behalf of respondent No. 1 that a general statement about a number of persons is not a statement of fact, that in order to be a statement of fact, it must refer to an individual cannot be accepted.

Reliance was placed on the case of *Ells v. National Union of Conservative and Constitutional Association*, (1900) 109 L.T.J. 493 which is referred to by the Supreme Court in the case of *Kumara Nand v. Brijmohan Lal Sharma*, A.I.R. 1967 Supreme Court 808 at 810. The actual report of this case is not produced but only a reference made thereto in the above case is relied upon. As pointed out by the Supreme Court, the facts of this case cannot be ascertained with sufficient clarity and also it is equally difficult to find out the ratio of the case from the reference made by the Supreme Court. This case does not lay down any general proposition, as sought to be contended on behalf of respondent No. 1, that a general statement about a number of persons cannot be regarded as a statement of fact or that in order to be a statement of fact, it must necessarily refer to an individual and not to a group of persons.

The point then for determination is, are the statements of fact made in the passage quoted in paragraph 2L of the petition false? Respondent No. 2 was asked in his evidence-in-chief to enumerate all the false statements in Ex. 57 in relation to his personal character and conduct and, according to him, the following statements in Ex. 57 are false statements in relation to his personal character and conduct.

- (1) S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy... represent the most reactionary and degenerate elements in the ruling party.
- (2) These men... prop up the Amichand Pyarelals and Chamanlals and support them in all their misdeeds and put a premium on dishonest businessmen and industrialists.
- (3) Patil is the boss of the political gang that is today taking the country down the drain and his defeat at the polls will deal a mortal blow to all those who stand for the worst in our public life.
- (4) The Congress party has always been many things to many men, but to Patil it has been the instrument to amass personal power in the manner of a Tammany Hall boss—power, not for the fulfilment of the aspirations of the masses but to provide help and succour to the exploiting classes in the country.

Though in his evidence respondent No. 2 has enumerated the above statements as false statements in relation to his personal character and conduct, each one of these statements is not relied upon as constituting a corrupt practice so far as the present petition is concerned. When these statements were enumerated by respondent No. 2, Mr. Jethmalani on behalf of the petitioner clearly stated that for the purpose of this petition, he only relied upon the extract of this article which is quoted in paragraph 2L of the petition as an instance of publication of a false statement falling within the scope of section 123(4) of the Act and he did not rely upon the other false statements above enumerated as forming part of the corrupt practice pleaded in paragraph 2L of the petition.

The above evidence of respondent No. 2 has not been challenged in cross-examination and it is, therefore, *inter alia* clearly established that the words "These men.....prop up the Amichand Pyarelals and Chamanlals and support them in all their misdeeds and put a premium on dishonest businessmen and industrialists" are a publication of statements of fact which are false. This evidence, however, is given by respondent No. 2 on the basis of the interpretation that he put upon the words used in the passage quoted in paragraph 2L of the petition.

The words "props up the Amichand Pyarelals and Chamanlals and supports them in all their misdeeds and puts a premium on dishonest businessmen and industrialists" are, as shown earlier, not the attributes of either the hard core or of the men who form the hard core. These words indicate the characteristics or attributes of the coterie and neither the petitioner nor respondent No. 2 nor any other witness examined on behalf of the petitioner has given any evidence to the effect whether such statements about or in relation to the coterie are true or false.

This being the nature of the evidence, the contention on behalf of the petitioner is that even if these words are the attributes or characteristics of the coterie, these statements are false because they are false in relation to persons who formed the hard core. Such a contention, in my opinion, overlooks the fact that where the statement is made about a class of persons which consists of a fairly good number of persons, it cannot be assumed that what is said to be the attribute or characteristic generally of the group or that class is necessarily the attribute or characteristic of each one of the members of the group. The burden of proving that the statement is false is on the petitioner and no evidence is led on his behalf to discharge the onus of proving that the statement is false *qua* or in relation to the coterie. The circumstances which I will presently consider in relation to the belief entertained by respondent No. 1 about the coterie may go to show that to a person not very favourably inclined or disposed to Congress, it may appear that in the case of some of the persons occupying prominent and important position in Congress, allegations of corruption and favouritism were publicly made; that such allegations against a few of them are proved, while a few of them resigned from position or office when *prima facie* enquiry into the correctness of those allegations was contemplated.

In order to constitute a corrupt practice under section 123(4), one of the essential ingredients to be established by the petitioner is that respondent No. 1 either believed the statement of fact published by him to be false or did not believe it to be true. No such averment is to be found in paragraph 2L which was introduced pursuant to the order made on Chamber Summons on July 14, 1967. It is not even pleaded in paragraph 2L that the averments therein made constitute a corrupt practice within the meaning of section 123(4). No such averment about the requisite belief is to be found either in the affidavit in support of the Chamber Summons dated July 4, 1967 for amendment or in the affidavit in support of the amendment dated July 19, 1967.

That this is an essential ingredient of a corrupt practice required to be pleaded is evident from the case of *Devatah v. Nagappa and others*, A.I.R. 1965 Mysore 102. In that case, such an averment about the requisite belief on the part of the candidate was missing in the petition and it was held that in the absence of such an averment, the material facts stated in the election petition, assuming all of them to be true, do not make out a corrupt practice. When such is the position, the Court ought not to raise an issue on the facts alleged nor should it permit the petitioner to adduce evidence on that aspect of the case. Any amount of evidence cannot be a good substitute for want of necessary pleadings.

That this is an essential requirement of a pleading is also evident from the case of *Sheopal Singh v. Ram Pratap*, A.I.R. 1964 Supreme Court 677. The contention raised in that case was that the petitioner had not joined as respondent another candidate against whom allegations of corrupt practice were made in the petition. Hariram was a candidate against whom certain allegations were made in the petition and he was not made a party to the petition. Section 82 of the Act required that a petitioner shall join as respondent to his petition any other candidate against whom allegations of any corrupt practice are made in the petition. Section 83 of the Act *inter alia* provided that if the provisions of section 82 have not been complied with, the Election Commission shall dismiss the petition. In view of these provisions, the contention in that case was that as allegations of corrupt practice were made against Hariram who was a candidate and as he was not made a party to the petition,

the petition should be dismissed *in limine*. Such a contention was not found favourable by the Supreme Court on the ground that there was no averment made in the petition that Hariram believed those statements to be false or did not believe them to be true. The Supreme Court took the view that in the absence of such an averment, it could not be held that there was any allegation of any corrupt practice within the meaning of section 82(b) of the Act against Hariram. In that event, as there was no allegation of corrupt practice against Hariram, the penal provisions of section 85 of the Act were not attracted. This decision undoubtedly shows that having regard to the view therein taken, an averment about the belief of a candidate that the statement published by him is false or he did not believe it to be true, is essential and in the absence of such an averment, in the petition, there is no plea in the petition that a corrupt practice is committed by the candidate. This decision, therefore, shows that there is no proper averment in paragraph 2L of the petition as regards the commission of a corrupt practice, as required by section 123(4) of the Act.

Because of such a contention in the course of the argument, on November 20, 1967, an application was made on behalf of the petitioner for an amendment of the petition. By that application the petitioner sought to add at the end of paragraph 2L of the petition the following words:—

"The first respondent knew that the allegations mentioned above and forming part of the said Blitz article were false. He did not believe them to be true. This attack on the personal character of the second respondent was calculated to impair the election prospects of the second respondent and advance his own".

This application for amendment was argued on behalf of the petitioner by Mr. Jethmalani during the course of his final reply. I rejected this application by my order dated December 21, 1967 stating that the reasons for such rejection would be given in the final judgment.

The contention on behalf of the petitioner is that an omission to plead in the election petition that respondent No. 1 either believed the statements quoted in paragraph 2L of the petition to be false or did not believe them to be true was merely a formal defect through oversight and could be cured by an amendment at any stage of the trial of the petition. The argument on behalf of the petitioner was that the Court has always the power to permit the petitioner to cure the defect when an imperfect cause of action has been pleaded.

A large number of cases were cited in support of the contentions urged on behalf of the petitioner and reference may be made to a few of the leading cases referred to.

In *Harish Chandra Bajpai and another v. Triloki Singh and another*, A.I.R. 1957 Supreme Court 444, after exhaustively discussing the provisions of the statute, the Supreme Court summed up the position thus: (1) Under section 83(b) the Election Tribunal has power to allow particulars in respect of illegal or corrupt practices to be amended, provided the petition itself specifies the grounds or charges and this power extends to permitting new instances to be given. (2) The Tribunal has power under Order 6 Rule 17 of the Code of Civil Procedure to order amendment of a petition, but that power cannot be exercised so as to permit new grounds or charges to be raised or to alter its character as to make it in substance a new petition, if a fresh petition on those allegations will then be barred.

In *S. M. Banerji v. Sri Krishna Aggarwal*, 22 Election Law Reports 64 it is laid down that within the limits prescribed by the Supreme Court in *Harish Chandra Bajpai's* case, the discretionary jurisdiction of the Tribunals and Courts to amend the pleadings is as extensive as that of a civil court and that the same well settled principles laid down in the matter of amendments to the pleadings in a suit should regulate the exercise of the power of amendment by the Tribunals or the Courts. The Courts and Tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted.

These principles laid down in *S. M. Banerji's* case were again reiterated in the case of *Bhim Sen v. Gopali and others*, 22 Election Law Reports 288.

Reliance was placed on behalf of the petitioner on the case of *A. K. Gupta and Sons v. Damodar Valley Corporation*, A.I.R. 1967 Supreme Court 96. This is a case dealing with an application for amendment of a plaint in a suit and by the proposed amendment, no cause of action was sought to be modified, altered or

enlarged. The only amendment made was in the prayer clause to ask for a decree for the contract money or such other amount as was to be found due on proper account being taken. This case relates to an amendment of a prayer clause in a plaint in a suit and will not be of much assistance for considering an application for amendment of an election petition.
13th Jan. 1968.

In *Srirangan Chettiar vs. Sorham Pillai*, A.I.R. 1935 Madras, 202, while considering an application for amendment for adjudication under the Provincial Insolvency Act, the Court held that the omission of the words "with intent to defeat and delay his creditors" in the petition for adjudication was merely a formal defect arising from the omission of the certain words as the act of insolvency was clearly set out and the amendment to include those words should be allowed. The Court approved of the observation of Lopes L. J. in *Weldon v. Neal* (1897) 1 Q.B.D. 394, where it is stated: "however a negligent or careless the first omission and however late the proposed amendment, the amendment should be allowed if it can be allowed without injustice to the other side."

In *Gangamal Ramchand v. Hongkong & Shanghai Banking Corporation* (1950) 52 Bom. L.R. 377, this Court held that it is open to the Court to allow a plaint to be amended so that it should disclose a cause of action. The Court has taken the view that where a plaint discloses an imperfect or defective cause of action, an amendment application to make the cause of action complete and to remove the defect ought to be allowed.

These cases show that while considering the application for amendment, the Court has to use discretionary power. Normally, when the application for amendment is to cure a formal defect, the Court will ordinarily allow an application for amendment. The Court has even power to allow amendment when the pleading originally filed does not disclose the cause of action and the application for amendment is made with the object of perfecting an imperfect or defective cause of action. The exercise of this discretion, however, will depend upon the facts of each case. Such discretion has to be exercised in consonance with the well recognised judicial principles.

This is the fifth application for amendment of this petition. In paragraph 2J of the petition, wherein reference has been made to false statements in relation to personal character and conduct of respondent No. 2. The Petitioner has referred to about 34 issues of the Daily Maratha. The dates of these issues of Maratha are set out in paragraph 2J. But the statements which, according to the petitioner, constituted the corrupt practice were neither set out in the petition nor annexed thereto. Round about the time when this petition was placed on Board for settling the issues, by my order dated July 3, 1967, the petitioner was permitted by annexure Ex. E to the petition, to set out particular reports in the issues of Maratha, relied upon, as constituting the corrupt practice. It may be noted that on the date when that order was passed, the time to file an independent petition for challenging the election was time barred.

The second application for amendment was made by Chamber Summons dated July 4, 1967. By this Chamber Summons, the petitioner wanted to add paragraphs 2K and 2L to the petition. Paragraph 2L deals with the corrupt practice alleged to be committed by respondent No. 1 by publishing his article in the issue of Blitz dated November 5, 1966. By my order dated July 14, 1967 that application was granted.

The third application for amendment to the petition was made on September 12, 1967, during the course of the hearing of this petition, while evidence was being led. By my order dated September 15, 1967, for the reasons therein stated, that application was partly allowed.

The fourth application for amendment of the petition was made during the course of the hearing of the petition. By that application, the petitioner desired to delete some of the items that were incorporated in Ex. E to the petition, pursuant to the order dated July 3, 1967. In Ex. E the petitioner referred to about 50 items of Reports of news-items, editorials etc. in or about 34 issues of Maratha. By this application, the petitioner desired to delete 28 items out of the said 50 items. That application was granted and thereafter only 22 items of publications in Maratha were relied upon as constituting corrupt practice under section 123(4) of the said Act.

This is the fifth application for amendment and it is necessary to consider the stage at which this application is made. The election in this constituency was held on February 21, 1967 and the result was declared on February 24, 1967. This petition was presented by the petitioner for declaring the election

of respondent No. 1 void on April 7, 1967. On August 24, 1967, the actual hearing of this petition commenced on the next day the Court started taking evidence and it was continued from day to day thereafter. During the course of this hearing on September 12, 1967, the third application for amendment of the petition, which is referred to above, was made. While that application was argued, the necessity of having such an averment in the petition was canvassed at considerable length but having regard to the nature of the pleadings then existing in respect of that application, I held that the requisite averments regarding the belief were those in respect of the amendment asked for. Thereafter the evidence led on behalf of the petitioner was continued and on October 6, 1967 the petitioner closed his case. From and after October 9, 1967 evidence on behalf of respondent No. 1 was taken and the last witness on behalf of respondent No. 1 was examined on October 24, 1967. Then the October Vacation intervened and on the re-opening of the Court on November 6, 1967, the arguments on behalf of respondent No. 1 commenced. On November 7, 1967 Mr. Porus Mehta, the Counsel for respondent No. 1, fully argued the question as regards the necessity of such an averment in the petition and the consequences of an omission of such an averment in the petition. It was thereafter on November 20, 1967 that this application for amendment was made. On November 24, 1967, the arguments on behalf of respondent No. 1 were over and on that day, Mr. Jethmalani the Counsel for the Petitioner started his reply. In the course of this final reply, on December 13, 1967 Mr. Jethmalani pressed this application for consideration by the Court. These facts go to show that the present application was made at a very late stage in the trial of this election petition.

This application is for amendment in paragraph 2L of the petition, which was introduced in the petition, pursuant to the order passed by me on July 14, 1967 allowing the Chamber Summons of the Petitioner dated July 4, 1967. In the affidavit in support of that Chamber Summons declared on July 4, 1967, the petitioner stated that both before and after the filing of the petition, an intensive investigation was carried on by him as also by respondent No. 2 and the facts sought to be introduced by the addition of paragraphs 2K and 2L were gathered only during the last week, i.e. during the last week of June 1967. In this affidavit in support of the Chamber Summons, the Petitioner had nowhere stated or otherwise suggested that when this election petition was filed, he was aware of this article published by respondent No. 1 in the issue of Blitz dated November 5, 1967, that he had given instructions to his Counsel about this article when the petition was drafted. It may be that probably the petitioner had not then with him a copy of the relevant issue of the Blitz wherein the article was published.

-The evidence of the petitioner, however, shows that he had read the article Ex. 57 for the first time on November 6, 1967, but the relevant issue of Blitz was not in his possession when the petition was filed. After this petition was filed, he was making a search of the reports published in the newspapers of the speeches, of the writings of and the interviews given by respondent No. 1. At that time, he had a hazy recollection that respondent No. 1 had written an article of the type that was published in the issue of Blitz dated November 5, 1967. He came across this issue of Blitz while making a search. In his cross-examination, he admitted that he had not forgotten about this article when this election petition was filed. He has not referred to this article in his petition because he had not with him the copy of the Blitz wherein the article was published. At that time, he had the recollection of nature of the allegations made against respondent No. 2. He said that he informed his Counsel about these allegations which were published in the Blitz. It was for his Counsel to decide whether to incorporate these allegations in the petition or not. He was unable to give any reason why his Counsel did not incorporate these allegations in the petition, when it was originally filed. He further says that he personally traced this issue of Blitz wherein the article appeared in the last week of June 1967. After securing this issue of Blitz, he showed it to his Counsel and thereafter made an application for amendment of the petition by Chamber Summons dated July 4, 1967. He said that he did not ask respondent No. 2 or any of his representatives to make a search about this article. When his attention was drawn to the averments made in the affidavit dated July 4, 1967, in support of the Chamber Summons, in connection with the intensive search, he said that this investigation was done by him and respondent No. 2 independently. Neither respondent No. 2 nor his representative drew his attention to this article after the petition was filed. A reference to the averments in paragraph 2L of the petition was actually made in the written statement filed by respondent No. 2 on July 1, 1967. When the petitioner was asked whether it was after these averments in the written statement of respondent No. 2 that he thought of applying for the amendment of the election petition, he said that it

is not true that it was only after the written statement of respondent No. 2 was filed or prepared that he thought of applying for the amendment of the election petition. He also says that it was not true that he had merely a hazy recollection of this article when the petition was filed, that he was fully aware of this article at the time when the election petition was filed and that his evidence-in-chief about his hazy recollection was not correct. This evidence of the petitioner seems to suggest that it is the petitioner's case that he found this article Ex. 57 as a result of independent search made by him and he made an application for amendment for introducing paragraphs 2L of his own.

The evidence of respondent No. 2 in this behalf, however, shows to the contrary. Respondent No. 2 in his evidence stated that he came to know for the first time of the article Ex. 57 in the issue of Blitz dated November 5, 1966 round about the time when the petition was filed. He said that after the petition was filed and before he filed his written statement Mr. Patkar, his son-in-law, showed him a note about the contents of this article. He also says that before the petition was filed he had a talk with the lawyer for the petitioner about Aminchand Pyarelal to whom a reference has been made in the article Ex. 57. He did not read the whole of the petition before it was filed but his son-in-law and the Petitioner told him about the points that were in the petition. He further says that when he filed his written statement in the petition, he found that the petitioner had not mentioned anything in the petition about Aminchand Pyarelal. That was a mistake, and that is why he put those allegations in his written statement. When he filed his written statement, he quoted an extract from the article of respondent No. 1 in Blitz dated November 5, 1966. He knew that when the issues were being settled in this petition, on his behalf an issue was sought to be raised about a corrupt practice alleged to be committed by respondent No. 1 by publishing this article Ex. 57. As such an issue was not raised by the Court at his instance, he suggested to the petitioner to apply for an amendment of the petition, for incorporating paragraph 2L. His further cross-examination shows that even during the election period, his attention was drawn to this article Ex. 57. He was asked questions whether he then thought it necessary to go to his lawyers in connection with what was stated in this article. He said that when his attention was drawn to some part of article Ex. 57, he did not immediately go to his lawyers to take action against respondent No. 1 because at that time he was busy with his election and it was not possible for him to go to the lawyers at that time. However, after the election petition was filed, he asked for full article written by respondent No. 1. He found that many damaging things had been stated against him by respondent No. 1 and that there was no reference to this article in the election petition filed in the Court. He, therefore, showed this article to his lawyer and asked him to incorporate it in his written statement.

This evidence of the petitioner and respondent No. 2 shows that at the time when the Chamber Summons dated July 4, 1967 was filed by the Petitioner for introducing *inter alia* paragraph 2L in the petition, after the period prescribed for filing an election petition, the petitioner deliberately suppressed from the Court several essential facts which were then within his knowledge and were relevant in connection with the application for an amendment of the election petition, especially when the application was made after the expiry of the prescribed period for filing an election petition. In the affidavit in support of the Chamber Summons, he did not disclose that he was fully aware of this article at the time when the petition was filed that he had already given instructions to his Counsel to incorporate this plea in the petition, that he was unable to give any reason why a plea in connection with this article was omitted in the original petition in spite of instructions to the Counsel. At the trial, his evidence that he independently found this article is far from truth. The evidence of respondent No. 2 shows that it was at his instance that the Chamber Summons dated July 4, 1967 was taken out as I was not prepared to raise an issue for commission of a corrupt practice by publication of such an article on the basis of an averment in the written statement of respondent No. 2. Such conduct on the part of the petitioner disentitles him to ask for a discretionary relief, especially when the application is made at such a late stage after the point was fully argued on behalf of respondent No. 1 in the course of final address. The application for amendment was, therefore, rejected for these reasons.

Even though there is no proper averment about the requisite belief on the part of respondent No. 1 in connection with the publication of article Ex. 57, as

the evidence is led in this case in relation to such belief, I will discuss the evidence hereafter.

Respondent No. 1 in his evidence has clearly stated that it was far from his mind at any time during the election campaign that respondent No. 2 had propped up Amichand Pyarelal and Chamanlal. So also it was far from his mind that respondent No. 2 had supported these two firms in all or any of their misdeeds. He did not believe in such a thing. He did not believe at any time that respondent No. 2 had propped up or supported the misdeeds of any firm with a shady record or reputation other than Amichand Pyarelal and Chamanlal. This evidence, therefore, can lead to only one conclusion that respondent No. 1 never believed that respondent No. 2 propped up Amichand Pyarelals and Chamanlals or supported them in their misdeeds or put a premium on dishonest businessmen and industrialists.

The attributes or characteristics set out in the passage quoted in paragraph 2L of the petition are qua the coterie in the Congress. The contention on behalf of respondent No. 1 is that there were some important and prominent leaders in the Congress organisation, who propped up the firms like Amichand Pyarelal and Chamanlal and put a premium on dishonest businessmen and industrialists. Qua some important and prominent leaders in Congress, circumstances, exists in this connection which need consideration.

Respondent No. 1 in his evidence stated that in Article Ex. 57 he said that within the Congress Party, there is a group of persons, who through the Congress Party control the destiny of the nation. He has expressed his opinion based on common knowledge that there is hard core of people commonly known as syndicate. He said in this article that such persons should be defeated at the election. He said this coterie, that is the large group of Congressmen hound out honest Congressmen from the Congress Party. This was written in the context of many defections from the Congress Party in Bengal, Bihar and elsewhere. He had in mind important Congress workers such as Mr. Ajoy Mukherji, Mr. Mahamaya Prasad Sinha and Mr. Humayun Kabir. According to him, this group supports dishonest businessmen and in the article, he gave the names of two firms, which were very much in news in those days, and held them out as symbols of corrupt firms. That is why he says that he referred to in the article "Amichand Pyarelals and Chamanlals". Amichand Pyarelal is the name of the firm, but these firms are referred to as the symbols. Between March and September 1966, these two firms were the subject of major controversy in Parliament. Specifically allegations were made against Mr. Subramaniam, the then Minister in charge of Iron & Steel in connection with Amichand Pyarelal. The main brunt of allegations against Amichand Pyarelal was in regard to the licences and import of steel. The firm of Chamanlal was also in the news with regard to the licences and the name of Mr. Nanda was associated with this firm. The overall impression then created was that the powerful men inside the Congress and inside the Government supported such firms. When the Prime Minister was going to appoint a Commission to go into the deeds of such firms like Amichand Pyarelal, Mr. Morarka, a prominent Congressman and Chairman of the Public Accounts Committee in Parliament suggested that the Prime Minister should be careful while selecting the Members of the Commission because these persons were powerful and were capable of buying up or influencing the Members of the Commission. He said that he has written the words quoted in para 2L of the Petition because the businessmen and the industrialists secure the support of the Congress Party and in turn support the Congress Party.

In his evidence, he has referred to a few prominent Congressmen against whom allegations of corruptions, nepotism or favouritism were openly and publicly made. He said that over a period of years allegations were made against top Congressmen of being involved with dishonest businessmen. He has given a few instances of such allegations. He said that a Commission of Enquiry presided over by Mr. S. R. Das, the former Chief Justice of the Supreme Court was appointed to enquire into the allegations made against Mr. Pratap Singh Kairon, at one time the Chief Minister of Punjab and that Mr. Pratap Singh Kairon had to resign as Chief Minister as a result of the findings of the Commission against him. Similarly serious allegations were made against Mr. Bakshi Gulam Mohammad, at one time the Chief Minister of Jammu & Kashmir, a Commission of Enquiry presided over by a Judge of the Supreme Court was appointed to go into the allegations and it was found that a number of charges against him were proved. He also mentioned that there were allegations made against Mr. Biju Patnaik. They were inquired into by a Sub-Committee of the Members of the Cabinet, presided over by Mr. M. C. Chawla. As a result of

this enquiry, Mr. Biju Patnaik had to resign as a Chairman of the State Planning Board. He also said that allegations were made against Mr. Bicen Mitra, at one time the Chief Minister of Orissa. They were also enquired into by the Cabinet Sub-Committee presided over by Mr. M. C. Chagla and consequently Mr. Mitra resigned as the Chief Minister of Orissa. He said charges were made against Mrs. Tarkeshwari Sinha, the then Deputy Minister in the Central Government. The Attorney General of India investigated into these charges and subsequently she was dropped from the Government. He said that the Supreme Court of India in one of its judgments passed certain strictures against Mr. Sanjiva Reddy, the then Chief Minister of Andhra Pradesh with regard to the licences given to certain transport operators. In view of those observations Mr. Sanjiva Reddy resigned as the Chief Minister of Andhra Pradesh. He also said that charges were made against Mr. T. T. Krishnamachari. Rather than having them investigated by the Attorney General of India, as suggested by the Prime Minister, he chose to resign. All these were to common knowledge and had created an impression amongst the public that a section of the leaders of the Congress was supporting businessmen and industrialists who were not honest. This evidence of respondent No. 1 has not been challenged in cross-examination and so far as the present petition is concerned, this evidence has to be accepted as uncontroverted.

It should, however, be remembered that I am not investigating in this petition the truth or correctness of various statements made against important leaders of the Congress and I am not really concerned with the correctness or otherwise of the allegations so made. These leaders are not parties to these proceedings and none of them has even appeared as a witness. I am only concerned in this case, whether material existed which permitted respondent No. 1 to entertain a bonafide belief of the type he alleges he had.

So far as the firms of Amichand Pyarelal and Chamanlal are concerned, overwhelming documentary evidence in the form of debates in the Lok Sabha and the reports thereof in the newspaper are produced, which go to show that several dealings of these firms were on more than one occasion severely criticised by Members of Parliament. The Public Accounts Committee (hereinafter referred to as "PAC") of Parliament has gone into the dealings of the firm of Amichand Pyarelal and its associate concerns. This Committee on April 21, 1966 presented to Parliament its 50th Report in connection with those dealings. This report unquestionably shows that for a number of years, the firm of Amichand Pyarelal and its associate concerns went on receiving favourable treatment in its dealings with the Government and its offices. Several extracts from this report are tendered as exhibits to show the findings of the PAC in respect of several dealings of this firm and its associate concerns.

Ex. 133 (an extract from the 58th Report of the PAC) shows that Messrs A.P.J. Private Limited—an associate concern of Amichand Pyarelal imported two consignments of M. S. Sheets of CIF value of Rs. 2,15,384 and Rs. 7,32,165 at Calcutta, without any import licence. The PAC also found that in quite a few cases, these parties imported materials either without any valid licence or without any licence at all. The above two consignments were considered as unauthorised imports. However, merely on the firms undertaking to re-export the entire consignment to the country of origin, the Iron & Steel Controller granted clearance permits (without exchange control copies for remittance) for clearance from Port and storage in their godown for onward re-export. The Sub-Committee was surprised that such unauthorised imports have mainly been made by the same group of firms and they had been condoned by the Office of the Iron & Steel Controller. How this firm failed to carry out its obligation to re-export faithfully is indicated by the subsequent exhibits.

Ex. 134 (an extract from the 50th Report of the PAC) shows that A. P. J. Pvt. Ltd. imported materials worth Rs. 9,00,000 without any import licence. When this unauthorised material was caught by the Customs, the party was able to get it released by getting a Customs Clearance Permit from the Iron & Steel Controller. What is most objectionable in this case is that the Iron and Steel Controller disregarded the views of the Government Solicitor and the Assistant Director of Shipping and issued the Customs Clearance Permit in favour of the party. But for this Custom Clearance Permit, the goods would have been confiscated by the Customs and action would have been taken against the Party under the Import and Export Control Act, 1947. Another disquieting feature of this case is that even when the party undertook to re-export the material imported unauthorisedly, they made a false declaration regarding the weight of the material etc. and an Officer

of the Iron & Steel Control Organisation gave a false certificate certifying accuracy of the quantity declared.

It was the practice of the Government to permit import of materials on the basis of barter deal by taking and enforcing Bank guarantees from the parties. Ex. 135 (an extract of the 50th Report of the PAC) shows that there were several failures in taking and enforcing Bank guarantees in this barter deals entered into by the firm of Amichand Pyarelal. This extract shows that firstly the Department of Iron & Steel wanted to have absolute bank guarantees, but the Iron and Steel Controller deduced it to a limited and conditional Bank guarantee in consultation with the Solicitors. Secondly, even this limited Bank guarantees were released by the Controller in dribbles, i.e. as and when a portion of exports took place. Thirdly, there was a complete laxity in the Office of the Iron and Steel Controller in watching the Bank guarantees and get tiny them renewed in time. Ultimately, it came to this that the limited Bank guarantees were accepted. Even those limited Bank guarantees were not watched effectively by the Iron & Steel Controller and they expired. The parties have also not renewed these Bank guarantees in spite of repeated reminders by the Iron & Steel Controller. Thus non-forfeiture of Bank guarantees has resulted in a loss of over Rs. 51 lacs. The Sub-Committee was constrained to observe that the whole scheme of taking Bank guarantees in this barter deal was a complete failure and was primarily due to the failure of the Office of the Iron & Steel Controller.

Some exhibits are tendered to show how this firm or its associate concerns failed to carry out its export obligations after securing the import licences and importing goods thereunder. Ex. 136 (an extract of the 50th Report of the PAC) shows that Messrs. Khemchand Rajkumar, a sister concern of Messrs. Amichand Pyarelal were granted some import licences for importing electroplating plants and other materials on their entering into certain export obligations. The Party availed of this import licence and imported goods thereunder. It however, did not complete its export obligations. Against expected exports of Rs. 23.93 lacs, this party made actual exports of Rs. 7.33 lacs. They did not pay any heed to orders of the Office of the Iron & Steel Controller in this regard. On the other hand, they showed impolite behaviour in correspondence with the Iron & Steel Controller. In spite of this, this firm was given not only two industrial licences for setting up tin plate plants in 1963 and 1964 but also imported raw material was released even before the plant went in production without asking them to fulfil their past obligation export of semic.

Ex. 137 (an extract of the 50th Report of the PAC) shows that M/s. Ramkishan Kulwantrai, an associate concern of Amichand Pyarelal in or about June 1960 secured an import licence worth over Rs. 1 crore from the Iron and Steel Controller without properly satisfying the authorities that there was a valid and firm export contract between this party and Hindustan Steel Ltd. Such issue of licence was completely in contravention of the instructions of the Ministry of Iron & Steel. The Sub-Committee was not prepared to believe that import licence worth over a crore of rupees can be issued at a time to a single party through mistake. The result was that even though this party entered into an agreement with Hindustan Steel Ltd. in January 1961 it failed to export any quantity of steel and the country suffered a loss of foreign exchange earnings of about one crore of rupees.

Ex. 138 (an extract of the 50th Report of the PAC) shows that no Bank guarantees were taken from Messrs. Surendra Overseas (sister concern of Amichand Pyarelal) in respect of two import licences against which import worth Rs. 43.33 lacs, were made by them. The Sub-Committee was unable to appreciate why Bank guarantee was not taken from the party for the due performance of the export obligation. The Sub-Committee noted that while granting three import licences, according to the normal procedure, Bank guarantees were taken for fulfilling the export obligation. So far as this party was concerned, no Bank guarantee was taken and the Sub-Committee observed that it was regrettable that both the Iron & Steel Controller and the Ministry deviated from the established procedure in this case.

Ex. 139 (an extract from the 50th Report of the PAC) shows how far a number of years no action was taken against this firm when they failed to carry out their obligations and how the action of black-listing this firm was delayed. The Sub-Committee pointed out that one of the main conditions stipulated in the Ministry's letter dated February 2, 1960 was that the Iron & Steel Controller will

have no further dealings with the exporters in case of failure to export. In all these cases, the parties failed to export either the full quantity contracted for or at all. The Sub-Committee regretted to observe that even this stipulation of the contract regarding the stopping of dealings was not carried out. For the various reasons, no action was taken so far by the Iron & Steel Controller or the Ministry against these parties. In view of the fact that the Government were obliged to black-list them or suspend the business on a number of occasions, the Sub-Committee felt that the Iron & Steel Controller should have been careful while entering into this barter deals involving huge amounts. Even when the failure of the parties to fulfil their export obligations took place in 1960, the Iron & Steel Controller issued the show cause notices to them only in April 1964 of which the drafting is very poor. The Sub-Committee felt that there was an unduly long delay in initiating action against these parties and there was no justification at all for this very poor drafting.

Ex. 141 (an extract from the 50th Report of the PAC) shows the comment of the Sub-Committee on the circumstances under which the Minister changed his previous order in connection with the black-listing of this firm and suspension of business therewith. The Ministry of Iron & Steel had for a period of two years from July 31, 1963 to July 31, 1965 suspended business with the firm of Amichand Pyarelal. This suspension of business related to the disposal of some 700 tons of imported round in an irregular manner by Surendra Overseas (an associate of M/s. Amichand Pyarelal). For this irregularity, the Minister had said that the firm and its associate concerns should be black-listed under a general order, so that the Government Departments and the Government institutions do not deal with this firm during the period of black-listing. After such an order by the Minister, a letter was received from the Iron & Steel Controller, enquiring into the matter. This letter was discussed with the Minister and he said that it was not his intention to include transport lines within the scope of his order. After reconsideration he decided that it was enough if the order was to suspend dealing with Messrs. Surendra Overseas and allied concerns for two years only and this order should apply only to the Iron & Steel Controller. The Sub-Committee was unable to understand the circumstances under which the Minister changed his previous order so soon that the business suspension with Amichand Pyarelal group of firms should not be communicated to other Government Departments.

This report of the PAC had been discussed later on in the Parliament on a number of occasions and severe comments have been made by Members of Parliament in view of those findings. Fact of black-listing of some firms like Amichand Pyarelal, Khemchand Rajkumar, Ramkishan Kulwantral and J. Kohan & Co., was referred to in the Parliament on May 13, 1966 and the report of such discussion in Parliament was published in the issue of the Times of India dated May 14, 1966. The relevant extract from the issue of Times of India is at Ex. X-68.

Mr. Subramaniam was the Minister in charge of the Ministry of Iron & Steel and the PAC had made adverse comments in connection with revision of the general order of blacklisting against the firm of Amichand Pyarelal and its associate concerns. In view of these adverse comments in the report, Mr. Subramaniam made a statement in the Lok Sabha on May 17, 1966 and there was some discussion in connection with this statement in the Lok Sabha on May 18, 1966. A report of this discussion in connection with the revision of the suspension order was published in the issue of Times of India dated May 19, 1966—Ex. X-69. In view of the statement made by the Minister Mr. Subramaniam, the matter was further inquired into by the PAC and the PAC submitted its 55th Report after enquiry on August 3, 1966. That report is Ex. 143. In this report, the Sub-Committee again examined the question and reiterated their adverse comments that they saw no good reason for revision of the earlier general order of black-listing the firms of Amichand Pyarelal and its associate concerns, within such a short time. This report shows that the first order of suspension of business was passed by the Minister on or about November 16, 1962. The order stated that till the matter with M/s. Amichand Pyarelal Group is finally settled, no contract of any sort should be entered into with them either by Hindustan Steel Ltd. or by the Iron & Steel Controller. In view of this order of the Minister, instructions were accordingly issued by the Ministry to Hindustan Steel Ltd. as well as the Iron & Steel Controller for immediate action. When irregularities were committed by M/s. Surendra Overseas in connection with the disposal of nearly 700 tons of imported rounds on June 28, 1963, the Secretary of the Ministry suggested that suspension of business dealings with the firm and its allied and associate concerns by the Iron & Steel Controller for a period of two years would meet the requirements of the case.

Mr. Subramaniam who was then the Minister in charge did not agree with this suggestion of the Secretary and he passed a general order of suspension of business so that the other Government Departments and institutions would not deal with these firms. This general order of suspension of business was passed by Mr. Subramaniam on June 28, 1963 and it was conveyed to the Iron & Steel Controller on the next day, i.e. on 29th June 1963. In the course of the enquiry, it was sought to be suggested before the Committee that these were merely draft orders and not the final orders by the Minister. But the Committee has clearly found that the orders of the Minister dated 28th June 1963 were specific, complete and final and they were conveyed to the Iron & Steel Controller as such on June 29, 1963. The Committee was unable to accept that these orders were in a draft form. In spite of such clear instructions from the Minister on July 6, 1963 the Deputy Iron & Steel Controller forwarded a draft of an order in which he proposed suspending business dealings with this group of firms but inquiring if the proposed order should cover to re-rolling mills and a shipping concern. The matter was re-considered in the Ministry and it was decided on July 12, 1963 that the suspension order should apply to those concerns which deal primarily in trade and commerce. The two re-rolling Mills were accordingly excluded from the scope of the suspension order. The revised instructions were issued on July 12, 1963 and he was requested that the orders regarding the suspension of business dealing might be issued immediately and a copy sent to the Ministry. In spite of such specific instructions, the Iron & Steel Controller made a second back reference on July 17, 1963 inquiring if suspension order was to be applied to A. P. J. Lines, which was a shipping concern. This letter from the Iron & Steel Controller should normally have been received by the Ministry within about two days, i.e. about 18th or 19th of July 1963. It was, however, dealt with the Deputy Secretary on July 22, 1963. Meanwhile, Mr. Jit Paul a representative of Amichand Pyarelal sought and had an interview with the Minister on July 20, 1963. It was thereafter on July 23, 1963 that the Minister passed his order that the suspension order should only be restricted to the Iron and Steel Controller and need not be circulated to all departments. The result of this revision of the order was that no action whatsoever was taken against this group of firms in this case. By the order dated November 16, 1962, the business with this firm was already suspended for a period of two years and the effect of the order passed in revision on July 23, 1963 was to maintain the same position. The Committee was also surprised how Jit Paul, a representative of this firm, came to know of the confidential action of blacklisting that was intended to be taken against this firm. The Committee was also surprised how in spite of clear and specific orders by the Ministry, the office of the Iron and Steel Controller twice referred the matter back to the Ministry.

This 55th report of the Public Accounts Committee was discussed in Parliament on August 5, 1966 and the report of such discussion in Parliament was published in the issue of Times of India dated August 6, 1966 (Ex. 70). Thereafter Government decided in principle to accept the suggestion of the Public Accounts Committee for a high power committee headed by a High Court Judge to investigate the various irregularities by the Steel Ministry in its barter deals with the Amichand Pyarelal group and fix the responsibility on the officers concerned for these lapses. A report of this decision and the discussion in connection therewith was published in the issue of Times of India dated August 10, 1966 (Ex. 71). On or about August 10, 1966, Mr. Subramaniam made a statement in Lok Sabha in connection with this 55th report of the Public Accounts Committee and stated that he was sorry that he had misunderstood the trend of the discussion in the House on the earlier occasion. The report of this statement of Mr. Subramaniam in Lok Sabha was published in the issue of Times of India dated August 11, 1966 (Ex. 72). A couple of days thereafter, some other serious allegations were made in Parliament in respect of other dealings or acts by the firm of Amichand Pyarelal group. On August 12, 1966, a PSP member Mr. Hem Barua alleged that the Amichand Pyarelal group had made a contribution of Rs. 7 lacs towards the election funds of Mr. Swaran Singh who was Minister for Iron and Steel before Mr. Subramaniam. A little later, shortly before the House adjourned that day, Mr. Swaran Singh made a brief statement in the House emphatically repudiating Mr. Barua's charge that he had received a contribution of Rs. 7 lacs for his election expenditure. He said that he had no election fund, that no contribution had been made to his election fund and that the firm in question did not contribute any amount through him to any election fund. On that day, in the House Mr. Madhu Limaye, a member of the SSP, asked whether Hindustan Aeronautics Ltd. had taken up a space on highly disadvantageous terms at Steelcrete House, Bombay, a building owned by the Amichand Pyarelal group and whether Hindustan Aeronautics, Ltd.

had paid Rs. 6 lacs as rent in advance for three years. That allegation was replied to by Mr. Swaran Singh by saying that Hindustan Aeronautics Ltd. might have taken these premises, but he had no knowledge about it. It appears from the report published in the Times of India dated August 19, 1966 (Ex. 74) that on the previous day in the Rajya Sabha, the opposition repeated the charge against the Government of showing undue favours to Messrs Amichand Pyarelal, though it had been blacklisted. On the same day, in the Rajya Sabha a question was also raised about big contracts being given to the firm of Mr. Biju Patnaik without calling for tenders. That day, Mr. Bhupesh Gupta alleged in the Rajya Sabha that the firm of Amichand Pyarelal had been shown undue favours by the Government because it was contributing to the Congress party funds in the same way as Mr. Mundhra. The same day, Mr. Raj Narain, another member of the SSP, made a reference in the Rajya Sabha to the report of the Commission of Enquiry into the charges against the late Mr. Pratap Singh Kairon and said it had gone into correspondence between Mr. Kairon and Mr. C. Subramaniam in February 1963 on the grant of an import licence to the Amichand group. Similar allegations were made in the Lok Sabha about the communication from Mr. Kairon by Mr. Surendranath Dwivedi, a Member of Parliament, on or about August 22, 1966, as appears from the relevant portion of the debates in Lok Sabha of that day (Ex. 144). The allegation made by the Member of Parliament was that some higher influence had worked with the Minister and, therefore, he had been obliged to change his earlier order.

The position about the group of firms of Amichand Pyarelal is succinctly summed up by Mr. Morarka, a member of the Congress Party and the Chairman of the Public Accounts Committee at a speech made by him in Lok Sabha on August 22, 1964. Ex. 145 is the relevant extract of the said speech of Mr. Morarka. In the course of this speech he said:—

"More than 15 years have passed since this party came on the scene. During these 15 years, the Committee is left with the impression that this party had played very sharp tricks on the Government; they have taken very unfair advantage from the Government and the officers. During this period of 15 years, what happened. Five Cabinet Ministers changed; four Secretaries changed; five Iron and Steel Controllers changed. There have been occasions when this firm was put on the black list for not less than three or four times. If you take the Public Accounts Committee's reference to the performance of this firm, this firm was mentioned for nine times. Then there have been innumerable occasions when its offices, etc. have been raided by the SPE and searched. In spite of that, it requires the Public Accounts Committee and this Parliament to take up this matter and to bring all these things to the notice of the people. . . . The general view is that some firms are getting very unfair advantage of the Government, that they are prospering and every time they get away with whatever they do. . . . While I welcome the decision of the Government wholeheartedly for the appointment of a Committee of Enquiry I must say one thing. . . . My request to the Honourable Prime Minister is that when they appoint the Committee, it must ensure that they have in their Committee people who cannot be approached by anyone. Otherwise, the very purpose of this Committee and the desire on the part of the Government to have a clean stable would be defeated."

It appears from the report in the Times of India dated August 23, 1966 (Ex. 75) that on the very day Mr. Morarka made the speech in Lok Sabha, the Prime Minister Mrs. Indira Gandhi intervened to announce the Government's decision to appoint a high power committee to enquire into all matters relating to the controversial steel transactions with a group of Amichand Pyarelal firms which will presumably cover both ministerial and official responsibility for any lapses. It appears from this report that some Members of Parliament made very serious allegations against this group of firms. This report shows that Mr. Dwivedi said in Parliament that he had in his possession many facts implicating Ministers, Secretaries and other officials in relation to the firm which had made at least Rs. 200 crores and another independent Member of the Parliament Mr. Homi Daji said that rupees 29 crores worth of licences were granted to the Amichand Pyarelal group over six years in spite of its malpractices. The personnel of this high power committee presided over by the former Chief Justice of India Mr. A. K. Sarkar was announced in the Rajya Sabha on August 27, 1966 as appears from the report of the debates in the Rajya Sabha in the issue of Times of India dated August 28, 1966 (Ex. 76).

The facts disclosed about the group of firms of Aminchand Pyarelal are so eloquent and were given so much prominence in the Parliament as well as in the press that respondent No. 2 in his evidence stated:

"I had the same impression about the firm of Aminchand Pyarelal as the Chairman had. I considered that the firm of Aminchand Pyarelal was not reliable and had committed many offences. It appeared from the statement of the Chairman R. R. Morarka that the firm of Aminchand Pyarelal continued to prosper from time to time notwithstanding the change of Cabinet Ministers, Secretaries. The problem in this case was how this all happened. It occurred to me but it did not occur to me in as dramatic a form as you (Respondent No. 1's Counsel) put. It occurred to me that Aminchand Pyarelal were unreliable and were guilty of misdeeds and they ought not to have prospered for such a long time, but that did not pertain to the Ministry of which I was in charge..... I asked myself the question how such a scandalous thing should occur while the Congress party was in power. I could not get a satisfactory answer within myself to that question. Even though I was not concerned with the Ministry of Iron and Steel, I did not go into the question who were the persons responsible for giving prosperity to Aminchand Pyarelal, because the Minister concerned was as big a Congressman as I am. I do not think that the Ministers in charge of Ministry of Iron and Steel were responsible for making Aminchand Pyarelal prosper. It was not my business to investigate who were the officers responsible for making Aminchand Pyarelal prosperous."

Another firm to which a reference has been made in the passage quoted in paragraph 2L of the petition is the firm of Chamanlal. There happened to be some discussion in Lok Sabha on March 24, 1966 about this firm of Chamanlal also. Ex. 132 is the relevant portion of the debates in Parliament in connection with the firm of Chamanlal. This report shows that many Members of Parliament have taken part in this discussion, but it will suffice for the present purpose if reference is made to what Mr. Madhu Limaye, a Member of Parliament and Mr. Sachin Chowdhari, then Finance Minister, said in the course of these debates. Mr. Madhu Limaye alleged in Lok Sabha on that day that one Haveliram was the astrologer and Prohit of Mr. Nanda, then Home Minister and had got profound relationship with him and Mr. L. M. Mishra; that Haveliram and his sons were engaged in business activities; that they had also connections with the firm of Chamanlal's that the Indian Ambassador in Iran repeatedly wrote to the Government that something must be done to prevent the theft of foreign exchanges by these firms; that this led the Enforcement Directorate of the Finance Ministry to enquire into their affairs and conduct raids on the offices of the firms connected with them; that Joshi Traders was one of the firms so raided; that this firm belonged to Haveliram and his two sons; that while the officers of the Enforcement Directorate were conducting this raid, they were threatened by Haveliram and his sons by saying that the Home Minister was their friend and was in Bangalore; that as soon as he returned from Bangalore, these officers would be suitably dealt with; that it was suggested on behalf of the Home Minister and his Deputy Minister that Chamanlal firm should get the facility of declaring its income under Article 68 of the Finance Act; that Mr. Madhu Limaye wanted to know whether it was a fact that one of the officers of Income Tax Department had searched for and made enquiries about alleged deposit of more than 10 lac rupees in the name of Haveliram. Mr. Sachin Chowdhari, then Finance Minister answered the various questions in the House. In the course of his reply he stated that in view of certain information received, offices of Chamanlal Brothers at several places in India were raided by the Special Establishment that as a result of information gathered through these raids, it was found that Chamanlal Brothers had transacted business in two commodities—one was zari which was exported to Hongkong and the other was pepper which was sent to Afghanistan and Iran. The *modus operandi* was that zari had been overvalued and in respect of that, certain export connections had been received from Government because at that time, the Government was giving certain concessions when zari was exported. The benefit which was received was alleged to have been received by Chamanlal—the benefit of the export licences on the value of the zari. Naturally when the zari was overvalued, the money had to come back. Actually, the sale that had been made abroad was at a lower price. In order to countervail that there was despatch of pepper. There was undervaluation and certain amount of money was countervailed or obtained by that means so that the zari business might be balanced. As a result, what was found was this that about Rs. 75 lacs worth of foreign exchange was there in respect of which

there had been bills of exchange drawn through Banks here negotiated through Banks there but the money had not actually come back to the country. Mr. Sachin Chowdhari further stated that the other side of the story is this that there was found by investigation that it was likely that Rs. 1.15 crores had evaded income tax in the case of Chamanlal. He further stated that his personal enquiries established that Mr. Haveliram was the personal astrologer and prophet of the Home Minister, but there had not been any pressure put. A little later, he said that he got no authority over his predecessor. He could not summon him, call minor was he in a position of a Judge who had got to judge between two persons. His position was to make an investigation as best as he could. He had done it by calling his officers and looking into every document himself to satisfy himself whether there was any noting by anybody suggesting that there had been interference by the Home Ministry or, the Finance Ministry and he made bold to say that there was absolutely no trace of that. Beyond that, he could not say if anything happened between two persons which he did not know he could not answer that. That was so far as Haveliram and the Home Minister were concerned.

When the attention of respondent No. 2 was drawn to the speech made by Mr. Sachin Chowdhari, then Finance Minister, he said that that speech was made by him as the Finance Minister of the Central Government, but everything stated by him was not as a result of the decision of the Cabinet of the Central Government. Ultimately when a Minister says something in the Parliament the general responsibility is of the Cabinet. As a general principle every other member of the Cabinet had a joint responsibility for such statement. After his attention was drawn to a report in Indian Express dated March 25, 1966 under the heading "Nanda hand in Delhi raid case denied," respondent No. 2 said that he read in newspapers that it was alleged against Mr. Nanda that he had connection with the firm of Chamanlal Brothers through Haveliram astrologer, but he did not remember whether he learnt about this report from the Indian Express or any other newspaper. He also said that from a note prepared by his son-in-law Mr. Patkar, he came to know that his name was not mentioned in connection with Chamanlal; that from that note, it was clear that there was no basis for linking his name with Chamanlal, but it was a habit of respondent No. 1 to link his name with so many things with which he had nothing to do.

In his written statement filed in this petition, no averment has been made alleging that his name was associated with any of the dealings of the firm of Chamanlal, but the only allegation is that he (respondent No. 2) is behind the alleged Amichand Pyarelal fraud. It is clear from the averments in the petition as well as the written statement of respondent No. 2 that at the time when these pleadings were filed, both the petitioner and respondent No. 2 proceeded on the assumption that by the article (Ex. 57), the name of respondent No. 2 was not associated with the firm of Chamanlals, otherwise one would have expected some pleadings in that behalf. The evidence of the petitioner also shows that he did not know who the Chamanlals referred in article (Ex. 57) were. He did not know whether the name of respondent No. 2 or Atulya Ghosh or Biju Patnaik or Sanjiva Reddy was associated with the transaction of Chamanlals. He was equally ignorant of the association of Mr. Nanda's name in Parliament with the transactions of Chamanlals.

Certain questions were put to respondent No. 2 while he was in the witness box in relation to certain prominent leaders in the Congress against whom allegations of corruption and favouritism were publicly made. He has frankly conceded the truth of most of the allegations that were brought to his notice in cross-examination. He said that a Commission of Enquiry presided over by Mr. S. R. Das the former Chief Justice of India, was appointed to go into the affairs of Mr. Pratap Singh Kairon and the members of his family in connection with acquiring wealth; that Mr. Kairon was the Chief Minister of Punjab and was an important All India Congress leader; that he was held responsible for some of the charges and that he ceased to be the Chief Minister of Punjab as a result of this enquiry. Respondent No. 2 also said that the affairs of Haridas Mundhra became the subject matter of enquiry presided over by Mr. M. C. Chagla, then Chief Justice of Bombay; that the Commission of Enquiry came to a finding that apart from some officials of the Central Government, Mr. T. T. Krishnamachari then Finance Minister could not escape some responsibility and that Mr. Krishnamachari resigned. He said that after some years Mr. Krishnamachari again became the Finance Minister in the Central Government, that representations were

made to the President of India by Members of Parliament against Mr. Krishnamachari; that he knew that Mr. Krishnamachari wanted that the then Prime Minister of India, Mr. Lal Bahadur Shastri should decide whether the allegations made against him were true, while the Prime Minister wanted to refer those allegations for opinion to the Attorney General of India. He added Mr. Krishnamachari resigned because he said that if the Prime Minister, after going into the allegations, had no confidence in him, he preferred to resign. He also said that he knew Mr. Biju Patnaik of Orissa; that Mr. Biju Patnaik was connected with one industry in Orissa, viz., Kalinga Tubes; that Mr. Biren Mitra was the Chief Minister of Orissa; that serious allegations of corruption were made against Mr. Biju Patnaik and Mr. Biren Mitra; that those allegations of corruption against them were referred to the Central Bureau of Investigation; that the Central Bureau of Investigation went into those allegations; that questions were raised in Parliament on several occasions why action was not taken against these two Congress leaders; that Mr. Biren Mitra resigned as the Chief Minister because of these allegations. He, however, did not know that Mr. Biju Patnaik resigned as Chairman of the State Planning Board because of these allegations. Respondent No. 2 also said that allegations were made against Mr. Sanjiva Reddy, then Chief Minister of Andhra Pradesh, alleging that he showed favour to some transport company; that he resigned as soon as there was a judgment of the High Court in this matter, or it may well be that the resignation was after the judgment of the Supreme Court in this matter of granting permit or licence to the transport company. Respondent No. 2 also said that Mrs. Tarkeshwari Sinha is an All India Congress leader, that she was a Deputy Minister in the Ministry of Finance; that allegations were made against her in connection with certain acquisition of property that he did not remember whether these allegations against her were referred to the Attorney General of India; that he thought she resigned, but he was not sure. He also said that there were charges of corruption made against Mr. Baxi Gulam Ahmed, at one time the Chief Minister of the State of Jammu and Kashmir; that these charges of corruption were referred to a Commission of Enquiry presided over by Mr. Ayyangar, the former Judge of the Supreme Court of India and that the Commission found him guilty of certain charges of corruption. He also said that Mr. K. D. Malaviya was a Minister in charge of the Ministry of Mines and Fuel and later on in charge of the Ministry of Oil and that certain allegations were made against him on the floor of Parliament in relation to the firm of Sirajuddin & Co., that Mr. Malaviya resigned because the allegations against him were referred to the Attorney General of India. On this aspect, respondent No. 2 concluded his evidence by stating that it is true that this list of 5 or 6 persons being involved in matters of corruption makes sorry reading, but this list of 5 or 6 persons is out of 500 to 600 Ministers in India in various States.

In the course of the trial, reference was made to a letter of introduction (Ex. 131) given by respondent No. 2 to one Mr. N. S. Hoon, addressed to Mr. Atulya Ghosh on February 2, 1965. In this letter respondent No. 2 described Mr. Hoon as a friend of his, as an enterprising industrialist and a person who acquired the major interest in Turner Morrison, one of the biggest combines in the country. By this letter respondent No. 2 requested Mr. Atulya Ghosh to treat Mr. Hoon as his friend. It appears from the evidence of respondent No. 2 that sometime in the beginning of September 1966, a note was placed on the table of the Lok Sabha by Mr. B. C. Dutt, the Finance Secretary wherein Mr. Hoon was described as a person of doubtful integrity. In view of such a note being placed on the table of the House, Mr. Hoon, who had not in fact given this letter of introduction to Mr. Atulya Ghosh, gave it to Mr. Madhu Limaye, a Member of Parliament, with a view to show that one of the Ministers of the Cabinet was describing him as a person of doubtful integrity, while another Minister of Cabinet was giving a letter of introduction as a friend. This letter of introduction was ultimately published in some Communist newspapers and ultimately, Mr. Hoon wrote a letter to respondent No. 2 explaining the circumstances under which he handed over the letter of introduction to Mr. Madhu Limaye.

In the course of the trial reference was also made to what Welles Hagen said in his book "After Nehru Who?" at page 233 about respondent No. 2. Reference was made to the passage to the following effect:

"Many Indian and foreign political observers now insist that Patil is out of the running for the Prime Ministership. Former Union Finance Minister C. D. Deshmukh says Patil has good managerial ability but so far as his popular influence is concerned, it is practically nil except for what he can obtain by log rolling with

the mercantile community in Bombay. He is distrusted and disliked by the people at large, who think he is too much of a machine politician. Patil gets things done by making deals with the money boys in Bombay."

On behalf of respondent No. 1 no evidence is led to show that the statement attributed to Mr. C. D. Deshmukh in this passage was ever made by him. Thus there is no evidence led on behalf of respondent No. 1 to show that such a statement was ever made by Mr. Deshmukh about respondent No. 2. While respondent No. 1 was in the witness box under cross-examination, a letter (Ex. X-72) dated October 10, 1967 purporting to be from Mr. C. D. Deshmukh to one Dharam Yash Dev was shown wherein Mr. Deshmukh is purported to have stated that he had not seen Welles Hangen's book and he did not recall having been interviewed by him. Except for showing the letter (Ex. X-72) to respondent No. 1, no other attempt has been made on behalf of the petitioner to prove the contents of this letter. Thus the only thing on record is the passage at page 233 in Welles Hangen's book putting certain words in the mouth of Mr. Deshmukh.

It emerges from the above discussion that serious allegations of dishonest dealings are made against the firm of Amichand Pyarelal and their associates, the firm of Khemchand Ramkumar, the firm of Ramkumar Kulvantrai, Mundhra Kalinga Tubes, a transport company in Andhra Pradesh, Sirajuddin & Co., the firm of Chamanlals and Mr. Hoon. I am not really concerned in the present case whether these allegations are at all true and if so, to what extent. It is also clear from the evidence of respondent No. 2 that large funds were advanced from the shipping fund to one Mr. Dharma Teja, that there was a reference to such advances to Mr. Dharma Teja in Lok Sabha and that Mr. Dharma Teja is required by the Central Government in connection with misappropriation of large sums of money. Respondent No. 2 also said that he read in newspapers that Shanti Prasad Jain and various persons from Dalmia Jain group were prosecuted for misappropriation of funds of either Dalmia Jain Airways or Bharat Airways. He was asked questions whether he remembered to have written any letter to Mr. Shanti Prasad Jain for contribution to the Congress fund in the year 1966-67 and he replied that he did not specifically remember to have written a letter to him because he wrote many such letters to businessmen. He thought that this time Mr. Shanti Prasad Jain did not contribute anything to the Congress election fund. When asked in cross-examination he said that he knew Mr. Ghanshyamdas Birla for the last over 25 years, that he is a constant and regular contributor to the Congress funds and that he had read in newspapers that a number of Birla firms were raided by the Enforcement Branch. His attention was drawn to the debates in Lok Sabha on December 2, 1966 (Ex. 148) where Mr. S. M. Banerjee, a Member of Parliament, said that he had a photostat copy of a letter written by Jit Pal (a representative of Amichand Pyarelal firm) to D.B. Thapar which mentioned that a sum of Rs. 50,000/- was given by him to respondent No. 2. Respondent No. 2 was present in Lok Sabha on that day, but he did not remember whether he was present in the House when Mr. Banerji made such a statement. He said that the proceedings in the question hour are sometimes as noisy as in a fish market and he did not hear Mr. Banerji making such an allegation in the house and he, therefore, did not contradict him in the House. He denied having received either Rs. 50,000/- or any other amount from Jit Pal. He said in fact he did not know either Jit Pal or D. B. Thapar.

In his evidence respondent No. 2 admitted that he wrote numerous letters to various businessmen and industrialists for contribution to the Congress election funds and he said he would not be surprised if as a result of his writing such letters over a crore of rupees were contributed to the Congress funds. A report of what transpired at an interview given by him to the correspondent of the UNI was published in the issue of Times of India dated January 16, 1967 (Ex. 147). At this interview one of the questions asked to respondent No. 2 was: From where does the Congress get its money? Respondent No. 2 replied that the Congress gets its money from the industrialists. He would collect Rupees one crore for the party. There was nothing underhand in this. There was a law about this. Everything was above board. The Swatantra, PSP, Jan Sangh, all got money from the industrialists. There was nothing wrong in that. In fact a list (Ex. 157) of the contributions amounting to several lacs of rupees by various businessmen and industrial concerns to the election fund of the Bombay Pradesh Congress Committee is brought on record and that shows that pursuant to the requests made by respondent No. 2, large funds were collected for the election fund of the BPCC, as shown by this exhibit.

When the attention of Mr. Jethmalani, Counsel for the petitioner, was drawn to these various factors, it was not disputed by him that a person not favourably politically disposed to Congress and its leaders, may reasonably and bona fide take the view that in the Congress organisation, on a number of occasions serious and substantial allegations of corruption or favouritism are made against persons occupying prominent and important positions or office; that against a few of them, these allegations are substantiated, while a few of them preferred to resign when a prima facie enquiry into the veracity of those allegations was contemplated. This evidence, therefore, shows that respondent No. 1 reasonably entertained the bona fide belief that there were some prominent men inside the Congress organisation and Government who supported dishonest firms of businessmen or industrialists. However, so far as respondent No. 2 is concerned there is a clear admission of respondent No. 1 that it was always far from his mind during the election campaign that respondent No. 2 propped up Amichand Pyarelal or Chamanlal or that he supported these two firms in all or any of their misdeeds, that he never believed any such thing about respondent No. 2 and that he did not believe that respondent No. 2 had at any time propped up or supported the misdeeds of any firm with a shady record or reputation other than Amichand Pyarelal and Chamanlal. Respondent No. 1 has also categorically admitted that he did not believe that respondent No. 2 had hounded out any honest Congressmen from public life and that it was far from his mind to suggest any corruption against respondent No. 2 either as a Minister or as a Congressman.

One of the important ingredients of the sub-section is that the statement should be made in relation to the personal character or conduct, etc. of another candidate. What is the meaning of the expression "personal character or conduct?" That question has been considered by the Supreme Court in the case of *T. K. Gangi Reddy v. M. C. Anjaneya Reddy*, (1960) 22 Election Law Reports 261. Dealing with this expression, the Supreme Court observed at page 268 thus:

"The words 'personal character or conduct' are so clear that they do not require further elucidation or definition. The character of a person may ordinarily be equated with his mental or moral nature. Conduct connotes a person's actions or behaviour."

It would be noticed that in prescribing the requirement that the false statement should have relation to the personal character of the candidate, a distinction is intended to be drawn between the personal character of the candidate and his public or political character. The provision postulates that if a false statement is made in regard to the public or political character of the candidate, it would not constitute a corrupt practice even if it is likely to prejudice the prospects of that candidate's election. This assumption is presumably based on the theory that the electorate being politically educated and mature would not be deceived by a false criticism against the public or political character of any candidate. The public and political character of a candidate is open to public view and public criticism and even if any false statements are made about the political views of a candidate or his public conduct or character, the electorate would be able to judge the allegations on the merits, and may not be misled by any false allegations in that behalf. It is on this theory that false statements affecting the public or political character of a candidate are not brought within the mischief of section 123(4). In order that the elections should be free, it is necessary that the electorate should be educated on political issues in a fearless manner and so the Legislature thought that full and ample scope should be left for free and fearless criticism by candidates against the public and political character of their opponents.

But the position with regard to private or personal character of the candidate is very different. Circulation of false statements about the private or personal character of the candidate during the period preceding elections is likely to work against the freedom of election itself inasmuch as the effect created by false statements cannot be met by denials in proper time and so the Constituency has to be protected against the circulation of such false statements which are likely to affect the voting of the electors. That is why it is for the protection of the constituency against such acts which would be fatal to the freedom of election that the statute provides for the inclusion of the circulation of false statements concerning the private character of a candidate amongst corrupt practices. Dissemination of false statements about the personal character of a candidate thus constitutes a corrupt practice.

Though it is clear that the statute wants to make a broad distinction between public and political character on the one hand and private character on the other, it is obvious that a sharp and clear-cut dividing line cannot be drawn to distinguish the one from the other. In discussing the distinction between the private character, sometimes reference is made to the "man beneath the politician" and it is said that if a statement of fact affects the man beneath the politician it touches private character and if it affects the politician, it does not touch his private character. There may be some false statements of fact which clearly affect the private character of the candidate. But there may be cases on the border-line where the false statements made affect both the politician and the man beneath the politician and it is precisely in dealing with cases on the border-line that difficulties are experienced in determining whether the impugned false statement constitutes a corrupt practice or not. It is clear that in dealing with corrupt practices alleged under section 123(4) where we are concerned with border-line cases, we will have to draw a working line to distinguish private character from public character and it may also have to be borne in mind that in some cases, the false statement may affect both the private and the public character as well. See *Inder Lal v. Lal Singh and others*, A.I.R. 1962 Supreme Court 1156 at pages 1159-60.

Reference may well be had to the oft-quoted case reported as the Cockermouth Division case, (1901) 5 O.M. & H. 155, wherein Darling, J. as he then was, says:

"What the Act forbids is this: You shall not make or publish any false statement of fact in relation to the personal character or conduct of such candidate; if you do, it is an illegal practice. It is not an offence to say something which may be severe about another person, nor which may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate; and I think the Act says that there is a great distinction to be drawn between a false statement of facts which affects the personal character or conduct of a candidate and a false statement of fact which deals with the political position or reputation or action of the candidate. If that were not kept in mind, this statute would simply have prohibited at election times all sorts of criticism which was not strictly true relating to the political behaviour and opinions of the candidate. That is why it carefully provides that the false statement, in order to be an illegal practice, must relate to the personal character and personal conduct."

Thus the boundary between the personal character and conduct and public character and conduct is well drawn, though, sometimes, it is thin. Sometimes a statement may appear to touch both the candidate's personal as well as public character. But deeper scrutiny enables a Court to ascertain whether there is a reflection on his personal character or on his public character. Any statement made, which reflects on the mental or moral character of a person is a reflection on his personal character, whereas any criticism of a person's political or public activities and policies is outside it. The fact such a statement is made in the course of a political or public activity does not make it any the less a statement in relation to his personal character or conduct. It is a question of fact in each case under what category a particular statement falls.

In order that the elections in a democratic country should be freely and fearlessly conducted, considerable latitude has to be given to the respective competing candidates to criticise their opponents political or socio-economic philosophy or their antecedents and character as public men. The legislature thought that in the heat of election it may be permissible for competing parties and candidates to make statements in relation to the public character of their opponents and even if some of the statements are false, they would not amount to corrupt practice. It often becomes necessary to examine carefully whether the false statement impinges on the personal character of the candidate concerned. Though it is not easy to lay down the general considerations which would help the determination of this issue in every case in actual practice but it may not be very difficult to decide whether the false statement impinges on the personal character of the candidate or on his public character.

The question arises whether the passage quoted in paragraph 2L of the petition is a reflection upon the personal character and conduct of respondent No.2. Where a charge of publication of false statement about the personal

character and conduct of a candidate is made, it must be sustained by the false statement directly relating to the personal character or conduct of the candidate and reference to the personal character and conduct of the candidate must be explicit and derivable from the plain meaning of the words used. The charge in paragraph 2L of the petition is that the passage quoted therein contains a clear insinuation that respondent No. 2 is behind the alleged Amichand Pyarelal fraud; that it is well known that the allegation against Amichand Pyarelal was that they had entered into conspiracy to defraud the Government of India by charging the Government of India for rice bags which never arrived from Burma; that the said allegation against Amichand Pyarelal was totally false and that respondent No. 2 had nothing to do with Amichand Pyarelal or any of their associate concerns or the said bags of rice or charges in respect thereof.

In his supplemental written statement respondent No. 1 has denied that reference to Messrs Aminchand Pyarelal in the said passage contains a clear or any insinuation that respondent No. 2 is behind the alleged Amichand Pyarelal fraud. He did not admit that the allegation against Amichand Pyarelal that they had entered into conspiracy to defraud the Government of India by charging the Government for rice bags which never arrived from Burma was false. He says that he is not aware that respondent No. 2 had nothing to do with Messrs. Amichand Pyarelal or any of their concerns or the said bags of rice or charges in respect thereof.

In the article (Ex. 57) there is no reference express or direct or even implied—to the rice bags deal of the firm of Amichand Pyarelal or its associate concerns. The petitioner, however, has attempted to give evidence how on reading this article, he carried an impression that the name of respondent No. 2 was associated with the alleged Amichand Pyarelal fraud in connection with the rice bags. He said in his evidence-in-chief that on reading this article, he carried the impression that Amichand Pyarelal are dishonest businessmen who had entered into a conspiracy to defraud the Government and that respondent No. 2 was associated with them in the conspiracy to defraud the Government. He had such impressions about Amichand Pyarelal from September 1966 as a result of his reading the summary of the proceedings of the Lok Sabha. When cross-examined he said that he carried an impression from reading this article that respondent No. 2 is associated with Amichand Pyarelal in a conspiracy to defraud Government because it is stated in this article that these men (i.e., S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy) prop up Aminchand Pyarelals and Chamanlals, support them in all their misdeeds and put a premium on dishonest businessmen and industrialists. According to him, the word 'which' in the phrase 'hard core of the coterie which controls' goes with the words 'hard core' and not with the word 'coterie.' He said that anybody who had knowledge about the activities of Amichand Pyarelal will positively come to the conclusion that respondent No. 2 had a hand with Amichand Pyarelal in a conspiracy to defraud the Government. He said that from the summary of the debates in Lok Sabha when Dr. Lohia made the speech on September 2, 1966 and the report thereof published in, *Times of India*, he gathered the impression that Dr. Lohia was alleging that respondent No. 2 was associated with Amichand Pyarelal in a conspiracy to defraud Government in connection with rice bags deal. He said that respondent No. 2 was referred to though he was not specifically referred to in the speech simply because it was stated by Dr. Lohia in the course of his speech that because of the negligence of the Food Minister, the prices had gone up and that there was a reference to foodgrains in the speech. On the day when he read this article, he did not know whether any allegations were made against Amichand Pyarelal between May and August 1966 in respect of certain transactions of steel wherein foreign exchange was involved. In fact he said that at the time when he read this article (Ex. 57) in the beginning of November 1966, he did not know whether any allegations were made against Amichand Pyarelal at any time in respect of transactions of steel. He did not know whether Public Accounts Committee criticised Mr. Subramaniam, the Minister in charge of the Ministry of Steel in respect of transactions of Amichand Pyarelal in iron and steel, that he was not aware of any report being published in newspaper about this report of the Public Accounts Committee, that he did not know whether a committee of enquiry to be presided over by the former Chief Justice of India was appointed to enquire into the steel transactions of Amichand Pyarelal. He further said that prior to November 5, he had also heard about Amichand Pyarelal apart from reading the speech

of Dr. Lohia, that his colleagues and workers were discussing about Amichand Pyarelal, that he heard about them from their discussion, that people were also talking about them while travelling in the bus. However, he was unable to give the name of any person who was so talking about Amichand Pyarelal even though hundreds of persons were talking about them. He said that prior to September 1966, he did not hear anything about the firm of Amichand Pyarelal at all.

Respondent No. 2 in his evidence stated that he came to know for the first time of the article (Ex. 57) round about the time the petition was filed and he said that the various attributes that are contained in the adjectival clauses that follow the word 'coterie' in the passage quoted in paragraph 2L of the petition are the characteristics or attributes of the men like S. K. Patil, Atulva Ghosh, Biju Patnaik and Sanjiva Reddy. According to him Atulva Ghosh, Biju Patnaik and Sanjiva Reddy had nothing to do with Amichand Pyarelal to the best of his knowledge. Therefore, the insinuation is a direct charge that he did the various things which are mentioned, that the other three names have been thrown there as cannon fodder, that the names of Atulva Ghosh, Biju Patnaik and Sanjiva Reddy might come while considering the words controls the destinies of the nation, even decided who should be the Prime Minister and who should not be, hounds out the few honest Congressmen from public life,—but that only his name was associated with Amichand Pyarelal on a true interpretation of this extract.

Respondent No. 1 in his evidence stated that there was no reference to respondent No. 2 anywhere or even in newspapers with regard to the firm of Amichand Pyarelal and Chamanlal; that reference had been made in Parliament to some rice deals; that the news thereof had appeared in newspapers, but there was nothing suggested that respondent No. 2 was connected with the rice deals; that when he wrote this article, he did not suggest that respondent No. 2 or any other persons whose names are mentioned in this article were directly or otherwise involved with the transactions of these firms. In his cross-examination he said that he was not aware that it was alleged in Parliament that one of the Central Ministers in charge of the Food Department was involved in Amichand Pyarelal affair; that he did not recollect to have come to know of the speech of Dr. Lohia in Parliament on September 2, 1966; that he did not remember having read the report of the speech of Dr. Lohia in Parliament on September 2, 1966 in connection with rice bags imported from Burma; that at the time when he wrote this article, he was not even aware that Amichand Pyarelal were associated with any rice deals; that in the months of August-September 1966, Amichand Pyarelal were in the news in connection with the steel transactions and licences.

Prior to 5th November 1966, reference to Amichand Pyarelal fraud in relation to rice bags deal appears to have only been made by Dr. Lohia in a speech made by him in Lok Sabha on September 2, 1966. Ex. 65 is the relevant extract of the speech of Dr. Lohia in Lok Sabha. This extract shows that at that time there was discussion in Lok Sabha about planning. While criticising planning, Dr. Lohia referred to a letter written by the Proprietor of the shipping company Apeejoy Lines to the Captain of the ship, a copy of which was sent by the Indian Embassy in Rangoon to the Government. In his speech Dr. Lohia said that this letter was suppressed and no action was taken either by the Minister or any other officer of the Government against the shipping company. He alleged that the conspiracy which was taking place was concealed, that the letter was not shown to the audit, that the letter was written in 1962, that since then four Ministers are concerned with this letter, that one of the four Ministers is responsible, that he desired that the name of the Minister who is responsible for not taking action should be traced and that the Minister who has not taken action should be removed as it was not necessary to hear any explanation in the matter. In this speech he did not even refer to the Ministry of Food; nor did he directly or indirectly refer to the name of respondent No. 2 in his speech. The tenor of his speech indicates that he himself did not know the name of the Minister who could be held responsible for not taking any action after the receipt of the letter from Indian Embassy in Rangoon. The report of the speech of Dr. Lohia in Parliament was published in the issue of *Times of India* dated September 3, 1966 and the relevant extract thereof is Ex. 64.

The letter from the Proprietor of the shipping company to the Captain of the ship that was referred to by Dr. Lohia is part of Ex. 159. That is the letter dated March 7, 1962 written by Surendra Overseas Pvt. Ltd. as owners of Apeejoy Lines

to all Masters of Ships. The letter is headed "subject: Precautions to avoid claims." In this letter Surendra Overseas Pvt. Ltd. referred to the claims made by Government by way of shortages in respect of shipment of rice from Burma to India. A mode is suggested in this matter how such a claim made on behalf of Government in respect of shortages should be met. It is stated in this letter:

"It is therefore, essential that apart from exercising more care in checking the tally done both at the time of loading and discharging, other ways also are instituted to minimise the claims to the maximum extent possible. Thus it is suggested that you arrange to discharge a sufficient number of empty gunny bags with loading marks as indicated in the respective Bills of Lading stencilled on them, so that even if there is a shortage in the number of bags, we will have an opportunity to repudiate the claim by setting off the shortages in the contents by the sweeping that may be delivered from each vessel. The discharge of these empty gunny bags should be by distributing them in the various corners of the lower holds of the matches in a damaged condition. Only trustworthy people may be employed for doing this work.

We are asking our Agents at the various ports to supply you with the necessary empty gunny bags."

Information about this letter was received by the Food Attache of the Embassy of India at Rangoon and he forwarded a copy of this letter to Mr. B. L. Sahney, Deputy Secretary (Imports), Ministry of Food and Agriculture, Department of Food, New Delhi along with his letter dated April 12, 1962 (part of Ex. 159). It appears from the evidence of Mr. Harivansh Lal (Ex. 158) that respondent No. 2 was at that time the Minister in charge of the Ministry of Food and Agriculture, but neither of the letters forming part of Ex. 159 were placed before him, nor were any directions sought from him as regards the action to be taken thereof, nor was any information given to him about the action taken on receipt of the said letters. The evidence of Mr. Harivansh Lal shows that the letters (Ex. 159) were dealt with at a much lower level.

It is, however, clear from the evidence in this case that no information, apart from that gathered from the speech made by Dr. Lohia in Lok Sabha on September 2, 1966 (Ex. 65) was generally available to the public in connection with the alleged Amichand Pyarelal fraud in relation to the rice bags from Burma. The discussion in Parliament on September 2, 1966 was on the subject of Planning. Dr. Lohia in his speech did refer to the letter that was received from the Food Attache, Indian Embassy at Rangoon in connection with an attempt to defraud the Government in the matter of rice bags deal of Amichand Pyarelal; he, however, did not specifically mention the name of any Minister during the course of his speech in Lok Sabha. His grievance was that a letter was received from the Indian Embassy in Rangoon in the year 1962; but no action, according to him, was taken on the said letter. Since the receipt of that letter, four Ministers had changed, but no action was taken. He wanted that the name of the Minister who was responsible for not taking such action on the letter should be traced and he should be removed from office. Dr. Lohia in his speech did not mention the name of respondent No. 2 as the Minister responsible for not taking any action. The petitioner is only surmising in the witness box in associating the name of respondent No. 2 with the alleged Amichand Pyarelal fraud in the matter of rice bags fraud as he had no information apart from merely reading the summary of the speech of Dr. Lohia in Lok Sabha. He has further gone on to say that such a thing was as if the talk of the town, but he was unable to specify the name of any such person or persons who were so talking. While scrutinising his evidence on this point, it has to be remembered that he says that prior to September 1966, he had not heard or known or read about the misdeeds of Amichand Pyarelal in reference to transactions in iron and steel. To say the least, this is rather surprising. From April 1966 to August 1966 on a number of occasions, there was discussion in Parliament about these misdeeds of Amichand Pyarelal. Public Accounts Committee has submitted two reports—50th and 53th reports—in connection therewith. These reports were subject matter of detailed discussion on a number of occasions in Parliament. A committee of enquiry was appointed to investigate into all these affairs and exhaustive reports of such discussions in Parliament had appeared in daily newspapers, as is evident from the various issues of the *Times of India* (Exs. 68 to 76) produced in this case. Such being generally the information available to the members of the public about Amichand Pyarelal and their associate firms, it is difficult to accept the evidence of the petitioner when he says that prior to September 1966, he did not hear or know or read anything about Amichand Pyarelal in newspapers. On merely reading the

summary of the speech of Dr. Lohia in Parliament on September 2, 1966, the petitioner had no ground, much less a reasonable ground, to carry an impression that respondent No. 2's name was associated by Dr. Lohia in his speech on that day in relation to the rice bags fraud of Amichand Pyarelal. His evidence that he had such an impression about the name of respondent No. 2 being associated in relation to the rice bags fraud of Amichand Pyarelal on merely reading the summary of Dr. Lohia's speech in Parliament cannot be accepted. It is clear that the petitioner does not claim to have any knowledge about this Amichand Pyarelal fraud in relation to rice bags apart from the summary of the speech of Dr. Lohia in Parliament. This shows that on the day when the article (Ex. 57) was published in relation to rice bags apart from the summary of the speech of Dr. Lohia in the public as a result which the name of respondent No. 2 could be associated with the rice bags fraud of Amichand Pyarelal.

It was only in the beginning of December 1966 that in a speech made in Lok Sabha, Dr. Lohia distinctly associated the name of respondent No. 2 with the rice bags fraud of Amichand Pyarelal. That speech was made by Dr. Lohia on December 1, 1966 in Lok Sabha. Ex. 188 is a relevant extract of the discussion in Parliament in relation to this speech of Dr. Lohia. In this speech Dr. Lohia has referred to the alleged shortages in foodgrains while they were transported in different ships belonging to Apeejay Lines between the year 1961 and 1964 and how there was loss of thousands of rupees. While giving particulars for the period upto 1963 June-July, Dr. Lohia alleged that such loss had taken place at the time when respondent No. 2 was the Food Minister. On this occasion, in very clear words he involved respondent No. 2 and Mr. Swaran Singh as the Ministers who were involved in the matter of shortages of foodgrains that were carried in the ships belonging to Apeejay Lines and he further said that he did not know whether there were others involved in it or not. In the course of his speech, Dr. Lohia said:

"I want to announce that the firm of Amichand Pyarelal was not a big company in the beginning but when Sardar Swaran Singh was for five years Minister for Steel and when Shri S. K. Patil in the beginning was Transport Minister and then when he became the Food Minister and then when Subramaniam came, then under the shelter of all these three Ministers under their favouring shelter the Amichand Pyarelal Company's kingdom expanded in the field of steel, in the field of steamships and in all other fields. It is not known how many Ministers are in his pocket. My question is that those in the Transport Ministry who have recommended this company have done a very good work. Why was the order of blacklisting of this company withdrawn and why were they given facilities? Will the Honourable Minister clear up this conundrum?"

On behalf of the Government, the position was explained by Mr. Govinda Menon, the Minister of State in the Ministry of Food, Agriculture, Community Development and Co-operation. It is unnecessary to go through the explanation offered by the Honourable Minister as I am not concerned in the present case with the truth or otherwise of the allegations made by Dr. Lohia in the course of his speech. Respondent No. 2 was, however, not present in Lok Sabha when this speech was made by Dr. Lohia. He came to know of it on the next day when the report of his speech appeared in newspapers. Immediately on coming to know of this speech on December 2, 1966, respondent No. 2 made a statement in Lok Sabha, the relevant extract of which is Ex. 117. Respondent No. 2 said that he found in a section of the press that day an observation attributed to Dr. Lohia alleging that he (respondent No. 2) was implicated in cheating of several lacs of rupees by a shipping company and that this alleged cheating took place in 1961. He further said that as he was not in the House when this statement was made, he could not contradict the statement on the spot. In the course of his statement, he made it abundantly clear that the accusation made against him was absolutely false and baseless and that he had nothing to do with the alleged incident mentioned by him. He challenged Dr. Lohia to repeat such an allegation outside the House, so that he might be in a position to take proper action against him.

These debates in Lok Sabha and the other evidence in the case, therefore, establish that on November 5, 1966 when the article (Ex. 57) was published in the issue of *Blitz* of that day, it was not generally known to the public that Dr. Lohia had associated the name of respondent No. 2 in connection with the rice bag fraud of Amichand Pyarelal or had made accusations involving him therein; that it was only on December 1, 1966 in the course of his speech in Lok Sabha that Dr. Lohia seems to have made a reference for the first time in connection

with respondent No. 2's name being involved in connection with the rice bags fraud of Amichand Pyarelal and that, therefore, the article (Ex. 57) cannot be construed to contain an insinuation that the name of respondent No. 2 is associated as being a party to the conspiracy by Amichand Pyarelal to defraud the Government of India by charging Government for rice bags which never arrived from Burma. Thus the charge levelled against respondent No. 1 in paragraph 2L of the petition as containing the insinuation therein suggested has not been established.

In the passage quoted in paragraph 2L of the petition severe criticism is made against the coterie that exists in the Congress organisation. The characteristics and attributes specified in the various adjectival clauses that follow the word 'coterie' therein are said to be the attributes or the characteristics of the coterie in the Congress organisation. The earlier discussion shows the existence of such a coterie or a syndicate in the Congress organisation. The Congress party is one of the biggest political parties in the country and has undoubtedly, many prominent leaders at all-India as well as State levels. Simply because men like respondent No. 2, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy are described as forming the hard core of the coterie, it will not be reasonable to infer that the passage quoted in paragraph 2L of the petition enumerated the characteristics of these specified individuals or is a reflection upon the personal character or conduct of respondent No. 2 and the other persons therein specified.

Besides the above statement in the passage in paragraph 2L of the petition, respondent No. 2 has in his evidence pointed out other false statements in article (Ex. 57) in relation to his personal character and conduct. He said that the statements—S. K. Patil, Atulya Ghosh, Biju Patnaik and Sanjiva Reddy represent the most reactionary and degenerate elements in the ruling party; Patil is a boss of the political gang that is today taking the country down the drain and his defeat at the polls will deal a moral blow to all those who stand for the worst in our public life; the Congress party has always been many things to many men, but to Patil it has been the instrument to amass personal power in the manner of Tammany Hall boss—power, not for the fulfilment of the aspiration of the masses but to provide help and succour to the exploiting classes in the country—are such false statements in relation to his personal character or conduct. While these false statements were enumerated by respondent No. 2 in his evidence, Mr. Jethmalani, the Counsel for the petitioner clearly stated that for the purpose of this petition, he only relied upon the extract of the article quoted in paragraph 2L of the petition as an instance of publication of a false statement falling within the scope of section 123(4) of the Act and that he did not rely upon the other statements as instances of corrupt practice. In view of this statement of Mr. Jethmalani, it is unnecessary to consider whether all these or any of those statements are false statements in relation to the personal character or conduct of respondent No. 2 as they do not form part of the corrupt practice or charge pleaded in the petition and relied upon during the course of the trial.

The next question that arises for consideration is whether respondent No. 2 was a candidate at the time when the article (Ex. 57) was written by respondent No. 1 and published in the issue of Blitz dated November 5, 1966. Part VI of the Act relates to disputes regarding election and Chapter I thereof deals with the interpretation of the various words used in this Part. Section 79(b) defines the word 'candidate'. By this definition, the word 'candidate' means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when with the election in prospect he began to hold himself out as a prospective candidate. The material point to be considered having regard to this definition is: Has the petitioner established that respondent No. 2 began to hold himself out as a prospective candidate on the day when the article (Ex. 57) was written by respondent No. 1 or was published in the issue of Blitz dated November 5, 1966?

16th January 1968:

When a question arises under section 79(b) whether a person had become a candidate at a given point of time what has to be seen is whether at that point of time he had clearly and unambiguously declared his intention to stand as a candidate so that it could be said of him that he held himself out as a prospective candidate. That he has merely formed an intention to stand for election is not sufficient to make him a prospective candidate because it is of the essence of the matter that he should hold himself out as a prospective candidate. That can only be if he communicates that intention to the outside world

by declaration or conduct from which it could be inferred that he intends to stand as a candidate. As soon as a person makes his choice and declares that he intends to stand for election and expresses his declaration through an overt act as for example, an application to a political organisation for a party ticket, he becomes a prospective candidate. He does not cease to be a prospective candidate until the party accepts him as a candidate and gives him a ticket. The determining factor is the decision of the candidate himself, not the act of the other persons or bodies adopting him as their candidate. See *S. Khader vs. Mannuswami*, (A.I.R. 1955 S.C. 775—1955) 11 Election Law Reports, 208.

The question sometime arises when the election begins. The subject is dealt with concisely in a passage quoted in Halsbury's Laws of England, Vol. 12, (2nd Edn.) Article 493 at p. 237 which is cited with approval by the Supreme Court in *N.P. Ponnuswami v. Returning Officer, Namakkal*, A.I.R. 1952 S.C. 64—1 Ele. Law Reports 133 at p. 134.

"493. Although the first formal step in every election is the issue of the writ the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent.' Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when an election begins must be carefully distinguished from that as to when 'the conduct and management of' an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case."

When respondent No. 2 held himself out as a prospective candidate is not pleaded either in the Petition or in the Written Statement of respondent No. 2. The only fact pleaded in the Petition is that respondent No. 2 is one of the eight candidates who contested the election to Lok Sabha from the Bombay—South Parliamentary Constituency and this election was held on February 21, 1967. In the absence of a plea in the pleadings of the Petitioner or respondent No. 2 as regards the time when respondent No. 2 held himself out as a candidate, the argument on their behalf is that when it is stated that a person is a candidate for election, it must be presumed that he was a candidate whenever the election commences. Such a plea is vague and does not specify the point of time at which respondent No. 2 held himself out as a prospective candidate at the election to be held in February 1967. Neither the petitioner, nor respondent No. 2 nor any other witnesses examined on behalf of the petitioner has said that respondent No. 2 held himself out as a prospective candidate prior to the publication of the article (Ex. 57) in the issue of *Blitz* dated November 3, 1966. Respondent No. 1 in his evidence has explained why he wrote the article (Ex. 57). The heading of this article is: "Why I am fighting Patil." Respondent No. 1 says that the candidature of respondent No. 2 was not announced at the time when the article was published but he presumed that he would stand as a candidate from Bombay—South Parliamentary Constituency as for the last three general elections, respondent No. 2 contested the seat to Parliament from that constituency. In his cross-examination he says that in the year 1961, he had declared his intention to fight the election in the year 1967 from Bombay—South Parliamentary Constituency against respondent No. 2. In April 1966, he also reiterated his intention to contest from Bombay—South Parliamentary Constituency against respondent No. 2. He used to do the same thing whenever there was an opportunity to speak about election. He was, however, not certain that respondent No. 2 would be the Congress candidate from Bombay—South Parliamentary Constituency. In past, respondent No. 2 was elected to Parliament from this Constituency. So, whenever he reiterated his intention to contest the election from Bombay—South Parliamentary Constituency, he assumed that respondent No. 2 would also contest from the same Constituency. When asked further questions in cross-examination, he said that he did not know that in the past nobody else except respondent No. 2 had applied for a Congress ticket from this Constituency; or that sometime in September 1966, Congress party invited applications from prospective candidates for election to Parliament or that respondent No. 2 was the only Congress candidate from Bombay—South Parliamentary Constituency. Apart from these questions in cross-examination to respondent No. 1, there is no evidence, oral

or documentary, to show when the Congress Party invited applications from prospective candidates who applied for such tickets and if at all when respondent No. 2 applied for such ticket.

The argument on behalf of the petitioner then is that it is implicit from the heading of the article (Ex. 57)—“Why I am fighting Patil”—and from the contents of the various paragraphs of that article that respondent No. 2 must have held himself out as a candidate. In this article he has stated that he had chosen to fight respondent No. 2 in a risky area deliberately, that he believed that respondent No. 2 could be defeated by the voters of South Bombay; that thousands of those who voted for him in 1967 and in 1962 would not care to vote for him again and would like to do their best to throw him out of the Constituency; that in the coming elections, there would be really a fight between the electors of South Bombay and respondent No. 2; that he had no doubt in his mind that the people would win. These statements in article (Ex. 57) as well as the heading thereof do proceed on the assumption that respondent No. 2 was to be a candidate for Lok Sabha from Bombay South Parliamentary Constituency and the entire tenor of the article is undoubtedly on that footing. The explanation, however, of respondent No. 1 is that he did not know that respondent No. 2 on that day or any date prior thereto had held himself out as a prospective candidate from that Constituency. He merely assumed that fact simply because in the past elections respondent No. 2 had contested the election from that Constituency. The fact when respondent No. 2 held himself out as a candidate is within his knowledge but no evidence is brought on record to indicate when respondent No. 2 did so. As there was no date specified even vaguely as regards the time when respondent No. 2 is supposed to have held himself out as a prospective candidate, on an enquiry by me on December 12, 1967, in the course of the final arguments, Mr. Jethmalani stated that it is his case that respondent No. 2 held himself out as a candidate within the meaning of section 79(b) of the Act, on or about October 14, 1966. Long prior to October 14, 1966, respondent No. 1 has made statement wherein he has used language similar to that contained in article (Ex. 57) of contesting the election against respondent No. 2. Respondent No. 1 inaugurated his election campaign for fighting the elections to be held in February 1967 as early as on August 9, 1966. Such inauguration of the campaign was done at a public meeting held at Sunderabad Hall on August 9, 1966. Ex. 200 is a report of the proceedings of this meeting published in the issue of Maharashtra Times dated August 10, 1966. This report is proved as an accurate report of the proceedings by the evidence of Dinkar Waman Randive (Ex. 199), a reporter of the Maharashtra Times, who covered this meeting. The evidence of Randive as regards the correctness of this report is not challenged. At this meeting, respondent No. 1 stated that he is contesting this election against the Congress candidate Railway Minister Shri S. K. Patil, that in his campaign he would not say anything of personal nature against respondent No. 2. He also suggested that both the candidates should come on the same platform, and discuss about the problems facing the country; that he is going to place the issues of policy in respect of Congress Government before the voter; that he is not going to make any propaganda of personal nature against the Railway Minister respondent No. 2 whom he described as his opponent; that he is not going to make any capital out of the recent railway accidents, but he would emphasise in his election propaganda about this mismanagement about the Railway Department or the consequences of the policy adopted by him when he was the Food Minister. The tenor of the speech of respondent No. 1 at the time of inauguration of his campaign thus supports his evidence in Court that he presumed that respondent No. 2 would be standing as a candidate from Bombay South Parliamentary Constituency. It is not the case of the petitioner that on August 9, 1966 respondent No. 2 held himself out as a prospective candidate from Bombay South Parliamentary Constituency. Such a conclusion is further strengthened by the contents of the appeal (Ex. 56) that respondent No. 1 issued to the voters. This appeal was issued to the voters on behalf of respondent No. 1 in different languages—English, Marathi, Hindi, Gujarati and Urdu. The evidence of respondent No. 1 shows that this appeal was issued in the end of the month of August 1966. In this appeal, respondent No. 1 has stated: “It is this popular desire that has motivated me to clash with the Railway Minister S. K. Patil for the Bombay South Lok Sabha seat. This I am doing of course against the advice of many of my friends and well wishers, who think that Patil is unbeatable—a myth I refuse to share.

I believe that S. K. Patil is beatable and I am sure that you—the voter from South Bombay—will do it. In fact, I have always considered it an insult to the intelligence and integrity of the South Bombay voter when people mentioned that Patil is an unscrupulous politician and has his “ways and methods” of winning

elections." This appeal also proceeds on the assumption that respondent No. 1 presumed that respondent No. 2 would contest the election to Lok Sabha from Bombay South Parliamentary Constituency. The language of Ex. 56 for indicating the reason why he decided to stand as a candidate from Bombay South Parliamentary Constituency is more or less similar to that contained in the article (Ex. 57). It is the case of respondent No. 1 clearly in his evidence that he made the inauguration of his campaign issued the appeal to the voters by Ex. 56, and wrote the article (Ex. 57) because he presumed that respondent No. 2 would be the Congress candidate from Bombay South Parliamentary Constituency. Such documents or statements by respondent No. 1, however, cannot establish the time when respondent No. 2 held himself out as a prospective candidate. The onus of establishing such facts lies entirely upon the Petitioner. However, no evidence is led to establish this fact.

Reliance is placed upon the report published in the issue of Times of India dated October 17, 1966 (Ex. X-68) and the report published in the issue of Maratha dated October 14, 1966 (Ex. X-96). In the Times of India (Ex. X-68) a report is published about the allotment of seats from various constituencies in Bombay by the Election Committee of the Bombay Pradesh Congress Committee. It also contains a report to the effect: Mr. S. K. Patil, Union Minister for Railways, the only sitting member to be retained in the Lok Sabha list, which was released on Sunday in Bombay, will seek re-election from the South Bombay Constituency. The report further states Mr. Bhawanji A. Khimji, a former BPCC president, told the Committee that Mr. Patil should be invited to contest the election from the South Bombay constituency. It was true that Mr. Patil had sent in a formal application, but in view of his position in the city and stature in national politics, Bombay would be honouring itself by asking Mr. Patil to file his nomination, he said. With the exception of Mr. Patil, all the other three candidates chosen for the Lok Sabha seats are first timers. This report also mentions the names of the various candidates for the Parliamentary Constituencies as well as the Assembly Constituencies.

In the issue of Maratha dated October 14, 1966 a report (Ex. X-96) is published to the effect: "Shri Sadoba Patil gets elected from South Bombay for the Parliament and as usual he has asked for the same constituency. As there is no opponent for him in the Congress, it is quite certain that he will get the ticket."

These Exts. X-63 and X-96 do show that prior to the date of this report, respondent No. 2 applied for a ticket from the BPCC for contesting the election from Bombay South Parliamentary Constituency and if these reports are regarded as evidence, there can be no difficulty in holding that prior to October 14, 1966, being the date of the report (Ex. X-96) respondent No. 2 applied for a ticket to the BPCC for contesting the election to Lok Sabha from Bombay South Parliamentary Constituency. The question, however arises whether it is open to the Court to treat Ex. X-96 and Ex. X-68 as evidence in the case upon mere production of the issues of the newspaper wherein such reports are published. Both Exs. X-68 and X-96 are news items in these respective papers and no evidence whatsoever is brought on record to prove the veracity of the contents of these reports Exs. X-68 and X-96. The statements contained in such reports are not automatically proved by merely producing in Court the issues of the newspapers wherein such reports are published. The facts stated in Exs. X-68 and X-96 are not proved to be authentic reports and it will not be permissible to me at the trial of this election petition to regard these exhibits as proved and to act upon the statement therein contained as true statements of facts. It is not, therefore, open to me to rely upon Exs. X-68 or X-96 for arriving at a finding on the date when respondent No. 2 held himself out as a prospective candidate.

Reliance was placed by Mr. Jethmalani upon the decision of the Allahabad High Court in the case of *Emperor Vs. Jhabwala and others* I.L.R. (1933) 55 Allahabad, 1040. At pages 1070 to 1073 the Court has discussed the question of admissibility of a number of documents and laid down certain principles. Particular reliance was placed upon principles 5 and 6 enunciated in this case, which are as under:—

5. Section 11 of the Act (Evidence Act) makes a "fact" inconsistent with any fact in issue or relevant fact relevant. It applied to facts not otherwise relevant under the preceding sections. It does not make all documents, which make the existence or non-existence of a relevant fact probable or improbable, relevant. The expression "highly

probable or improbable" is significant. It indicates that the connection between the facts in issue and the collateral facts sought to be proved must be so immediate as to render the co-existence of the two highly probable. The relevant facts under this section either (i) exclude or (ii) imply more or less distinctly, the existence of the facts sought to be proved.

6. Copies of printed newspapers containing an account of some proceedings, found in the possession of one accused, are evidence of the fact of the publication of such an account in that paper, but are not by themselves evidence of the truth of the facts stated therein, unless in connection with other facts they make the existence or non-existence of the facts mentioned "highly probable or improbable."

These principles do not assist the Petitioner in his contention that Exs. X-68 and X-96 should be regarded as automatically proved so far as the contents thereof are concerned by the mere production of the issues of the newspapers wherein they were printed. Whether the report Ex. X-68 or Ex. X-96 was published respectively in the Times of India or in Maratha is not a matter in issue in the present case. The matter in issue is when respondent No. 2 held himself out as a prospective candidate. To establish that fact, what is relied upon is the truth of the statement contained in these two reports and not mere the publication of such reports. It was pointed out by Mr. Jethmalani that there is no evidence of repudiation of the statement in Exs. X-68 and X-96 by respondent No. 2, that there is no evidence to the contrary led by respondent No. 1 showing that respondent No. 2 actually held himself out as a candidate, at some other time that it is common knowledge that all political parties embarked upon selection of candidates about three or four months prior to the polling day and that there is no evidence of repudiation or correction of these reports by the election committee of the BPCC or any of its member. He submitted that in view of these factors, the contents of Exs. X-68 and X-96 should be regarded as proved. I am not inclined to accept such a contention. The contents of this report qua the application of respondent No. 2 for a Congress ticket could ordinarily be proved by respondent No. 2 by stating when he made such an application. The same fact could also be proved by the election committee by pointing out the time when such an application was received. The factors and circumstances referred to above by Mr. Jethmalani cannot automatically go to prove the contents of Exs. X-68 and X-96.

As regards Ex. X-96 a further contention is urged on behalf of the petitioner that it is an admission by Mr. Atre, the owner, editor, printer and publisher of the newspaper Maratha, that Mr. Atre is the agent of respondent No. 1 as that term is understood under the Election Law and that the admission by Mr. Atre is binding on respondent No. 1. Even if Mr. Atre is regarded as the agent of respondent No. 1 as understood under the Election Law, Ex. X-96 is not an admission by Mr. Atre. Under s. 18 of the Evidence Act, statements made by a party, to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorised by him to make them, are admissions. In order to be an admission under this section, the first thing to be established is that it must be a statement by the agent to any party. Ex. X-96 is not a statement by Mr. Atre but it is merely a report of a news item published in his newspaper Maratha. It is, therefore, unnecessary to consider whether the other essential ingredients of section 18 are satisfied in this case so as to make it an admission. Reliance was also placed upon section 19 of the Evidence Act. Under that section statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability. The provisions of this section can only be attracted if it is first established that there is a statement made by a person whose position or liability, it is necessary to prove as against any party to the suit. In the present case, this is not a statement made by Mr. Atre. The provisions of s. 19 of the Evidence Act will be of no avail to the petitioner.

In the alternative it is contended that such a report is published in the Maratha as a result of the information obtained by a reporter of Maratha, that a reporter of Maratha being employed by the editor, in the normal course of business should be regarded as the sub-agent of respondent No. 1 for the purposes of election, and that as this is in any event an admission by a sub-agent. Reliance was placed upon the observation of Lush J. in Plymouth's case (1881) 111 O.M. & H. 107 at p. 108 where it is stated: It is clear law that if an agent of the candidate employs a sub-agent to negotiate with a voter for going to the poll, and the sub-agent commits an act of bribery in carrying out his commission, the candidate is as responsible as if the act had been done by the agent himself. Even if Mr. Atre is regarded as agent of respondent No. 1 as understood under the Election Law, a reporter of the newspaper Maratha is not a sub-agent employed by Mr. Atre as the agent of respondent No. 1 in the course of his agency. Normally a reporter is employed by an editor and publisher of a newspaper for the purposes of the business. It is not simply by reason of the fact that Mr. Atre is the editor, and publisher of the newspaper Maratha that he is to be regarded as agent of respondent No. 1 as understood under the Election Law. The mere appointment of a reporter by Mr. Atre as an editor of Maratha will not make such reporter a sub-agent of respondent No. 1 for the purpose of his election. It has further to be remembered that Ex. X-96 is not the report of the statement by the reporter of Maratha. So, even if such a reporter is regarded as a sub-agent, it is not a statement by sub-agent. Ex. X-96 is merely a publication of certain information brought by or received by the reporter of Maratha. How such information was gathered by the reporter is not established. Ex. X-96 cannot in any event be regarded as a statement by a sub-agent and the report of news item by the sub-agent can never be regarded as an admission of a sub-agent either under section 18 or section 19 of the Evidence Act. The petitioner, therefore, cannot rely upon the report Ex. X-96 by the mere production thereof as an admission either by Mr. Atre as agent of respondent No. 1 or as an admission by a reporter as sub-agent of respondent No. 1.

There is, therefore, no evidence led in the case to establish the specific point of time when respondent No. 2 held himself out as a candidate. The result, therefore, is that the petitioner has failed to establish that respondent No. 2 was a candidate within the meaning of Section 79(b) of the Act at or prior to the time when article (Ex. 57) was published on November 5, 1966.

On November 20, 1967 during the course of the final arguments in this case, an application was filed on behalf of the Petitioner for raising an additional issue as regards the time when respondent No. 2 held himself out as a prospective candidate or in any event to allow the petitioner to lead further formal evidence as the fact—of respondent No. 2 being a candidate within the meaning of section 79(b) of the Act prior to November 1, 1966 or in the alternative to re-call respondent No. 2 and receive evidence in support of the above fact. Such an application was strenuously resisted on behalf of respondent No. 1. By my order dated December 21, 1967 I rejected this application and directed that the reasons for such rejection would be given in the final judgment.

The stage at which this application is made is such that the Court will not ordinarily be inclined to grant such an application. The actual hearing of this election petition started on August 24, 1967 and on the next day the evidence of the petitioner commenced. The evidence of witnesses called by the petitioner was taken from day to day thereafter. On October 6, 1967, the petitioner closed his case. On October 9, 1967, the Counsel on behalf of respondent No. 1 opened his case and in the course of this opening he pointed out that there was no evidence as regards the time when respondent No. 2 held himself out as a candidate. On that very day, the evidence of respondent No. 1 commenced and in the course of his evidence, he stated that he merely presumed on the date when he wrote article (Ex. 57) that respondent No. 2 would be the Congress candidate from the Bombay South Parliamentary Constituency as in the past elections, respondent No. 2 was contesting the seat from that Constituency and that he did not know that on that day respondent No. 2 held himself out as such candidate. On October 24, 1967 the last witness on behalf of respondent No. 1 was examined and thereafter the Court was closed for the October Vacation. On the re-opening of the Court on November 6, 1967, the final arguments on behalf of respondent No. 1 commenced. This contention that the petitioner has failed

to establish that on the date when article (Ex. 57) was published, respondent No. 2 held himself out as a prospective candidate—was argued fully on November 7, 1967 and it was thereafter on November 20, 1967 while the further arguments on behalf of respondent No. 1 were going on that the present application has been made. This undoubtedly shows that the present application has been made at a very late stage in the trial of this petition.

Under the Act, the obligation to state all material facts on which the petitioner relies is cast upon him. However, there is no averment in the petition when respondent No. 2 held himself out as a prospective candidate. A written statement is also filed on behalf of respondent No. 2 and even in this written statement, the time when he held himself out as a prospective candidate is not stated. When the issues were settled in this case on or about July 3, 1967 I enquired of the Counsel from both sides whether they desired a separate issue to be raised about each ingredient of a corrupt practice pleaded in the case and both the Counsel informed me that it was not necessary to do so. Under the circumstances, on that day, when the issues raised on behalf of respondent No. 1 were settled, composite or comprehensive issue was raised in respect of each corrupt practice pleaded in the petition. It was clear to both the parties that a composite issue of such a nature was wide enough to include within its scope every ingredient of a corrupt practice required under the Act. It is therefore unnecessary to raise an independent issue as regards the time when respondent No. 2 held himself out as a prospective candidate. Such an issue is already covered by the issues raised in the present case.

Even when an application for an amendment of the petition by introducing paragraph 2-L was made by the Chamber Summons, the petitioner did not state in that paragraph, the time when respondent No. 2 held himself out as a candidate. In the supplementary written statement filed on behalf of respondent No. 1, he has contended that article (Ex. 57) was published much prior to the date of the election and the proclamation by the President calling upon the voters of the Bombay South Parliamentary Constituency to elect the representative to Lok Sabha and is, therefore, irrelevant and immaterial for the purpose of this petition. A further submission is made in this paragraph that all statements, allegations and public speeches made by respondent No. 1 prior to the date of the election and the proclamation by the President calling upon the voters of the Bombay South Parliamentary Constituency to elect their representative to Lok Sabha are irrelevant and immaterial to the petition. In respect of the averments in paragraph 2-L of the Petition, having regard to the method adopted for settling issues on the earlier date, only a comprehensive and composite issue was raised and no separate issue was raised as regards each ingredient of the corrupt practice required to be proved in the case. In spite of there being a distinct plea in the supplementary written statement of respondent No. 1 that all statements, allegations and public speeches made by respondent No. 1 prior to the date of the election and the proclamation by the President calling upon the voters of Bombay South Parliamentary Constituency to elect their representative to Lok Sabha are irrelevant and immaterial to the case, no evidence was led on behalf of the petitioner pointing out the time when respondent No. 2 held himself out as a candidate. Even when the case was opened by Counsel for respondent No. 1, the contention that the petitioner has failed to establish that respondent No. 2 was a candidate prior to the publication of article (Ex. 57) was raised and evidence to support that contention was actually led on October 9, 1967 when respondent No. 1 was in the witness box. Thus the petitioner and full knowledge of the contention intended to be raised on behalf of respondent No. 1. In fact, respondent No. 1 has been cross-examined on his evidence on this point, but at that stage, the petitioner did not think of amending this petition or of an additional issue to be raised or of further evidence to be led.

Reference was made to several cases arising both under the Code of Civil Procedure as well as the Code of Criminal Procedure, but it is unnecessary to refer to each one of them as the principles are judicially well settled. In *Shamu Patter v. Abdul Kadir Ravuthan* (1912) 39 I.A. 218, one of the grounds on which the judgment was *inter alia* challenged was that the subordinate Judge acted irregularly and without jurisdiction in framing an issue after the close of the arguments and deciding the case on it. With regard to this contention Their Lordships pointed out that s. 149 of the Civil Procedure Code (Act XIV. of 1882)

which is applicable to the proceedings, is conclusive. That section declares that the Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed. The first part of the section leaves it in the discretion of the Court to frame such additional issues as it thinks fit, whilst the latter makes it imperative on the Judge to frame such additional issues as may be necessary to determine the controversy between the parties. The Subordinate Judge was, therefore, fully empowered to frame the issue on which he decided the case.

The present application is not merely restricted to the framing of additional issue but is for permitting the petitioner to lead further evidence on this issue or in the alternative, for re-calling respondent No. 2 in that behalf. As indicated earlier, a composite and comprehensive issue No. 42 is wide enough to include the contention, whether respondent No. 2 was a candidate within the meaning of the Act at the time when article (Ex. 57) was published. It was unnecessary to raise an independent issue of that nature in connection with this particular corrupt practice as at the suggestion of Counsel of both the sides, a comprehensive issue of the nature settled in this petition is regarded as wide enough to include a contention in respect of every essential ingredient of a corrupt practice required by the Act. Shamu Patter's case is not a case where the party had asked for liberty to lead further evidence at a late stage. That was merely a case for framing an additional issue.

Strong reliance was placed on an unreported decision of the Supreme Court in the case of *Jamatraj Kewalji Govani v. State of Maharashtra*, Criminal Appeal No. 217 of 1966 decided on April 4, 1967. This was a case of a prosecution for offences committed under sections 135(a) and 135(b) of the Customs Act, 1962. The facts of that case show that on November 16, 1964, the shop of the appellant Govani was searched by the Enforcement Branch of the Reserve Bank of India, nothing incriminating from the point of view of the Reserve Bank was found in the shop but a large number of watches, clocks, cigarette lighters, cameras, transistors, tape recorders etc. were found; that information was given to the customs authorities; that the Assistant Collector of Customs thereupon issued a warrant for search of the premises under section 115 of the Customs Act, that it was stated in the warrant that there were reasons to believe that prohibited and dutiable goods liable to confiscation and documents and things useful for and relevant to the proceedings were secreted in the shop; these goods were thereafter seized; proceedings for confiscation of the goods and for penalties were commenced against Govani; in those proceedings Govani could not prove that the goods had borne the necessary customs duties; after obtaining the necessary sanction for prosecution, criminal proceedings were adopted against Govani for the offences under the above mentioned sections of the Customs Act; at the trial two witnesses were examined; the Preventive Officer, Customs, Ranade deposed to the seizure of the goods as the search was under the directions of Dutta, Preventive Additional Chief Inspector. In his evidence, he admitted that it was Dutta, who decided which of the watches should be seized and which were to be released; the other witness only proved the seizure of the contraband goods and the exhibits in the case. In his statement under s. 342 of the Code of Criminal Procedure, the accused Govani stated that the burden would have been on him to prove that the goods had been customed provided the goods had been seized under the Act in the reasonable belief that they were smuggled goods; but no witness had deposed to such belief. Such a statement on behalf of the accused was filed on July 15, 1965. On the following day, the prosecution applied for the examination of Dutta, Inspector of Customs, Bombay, as a court witness in the interests of justice, to prove reasonable belief at the time when the goods were seized. That application was granted and after taking the further evidence, the accused was convicted and sentenced to fine as well as imprisonment on both the counts and the watches were ordered to be confiscated. Govani appealed to the High Court. His main contention was that the evidence of Dutta was improperly received by the Magistrate and should be excluded from consideration. The High Court rejected this contention and upheld the conviction. An appeal to the Supreme Court was also dismissed. The Supreme Court pointed out that this was not a case in which the prosecution was trying to fill up the gap; in the present case, the circumstances already deposed to by Ranade and otherwise on record clearly established that some one must have seized the watches entertaining the belief that they were smuggled. This belief was obviously entertained by Dutta. The Court was right in thinking that the just decision of the case required that the nature of the belief underlying the seizure

should be before it on oath of the person making the seizure so that Government might be required, as the policy of the Customs Act, 1962 requires, to prove his innocent possession. As Government had no defence beyond taking advantage of the inadvertent omission, the Court took the view that the defence had no merit and the conviction was upheld. The Supreme Court approved of the observations of Tindal C.J. in *Reg. v. Frost*, 4 St. Tr. (N.S.) 85 at p. 336, which are oft quoted:

There is no doubt that the general rule is that where the Crown begins its case like a plaintiff in a civil suit, they cannot afterwards support their case by calling fresh witnesses, because they are met by certain evidence that contradicts it. They stand or fall by the evidence they have given. They must close their case before the defence begins; but if any matter arises *ex improviso*, which no human ingenuity can foresee, on the part of a defendant in a civil suit, or a prisoner in a criminal case, there seems to me no reason why that matter which so arose *ex improviso* may not be answered by contrary evidence on the part of the Crown."

These observations show that the matter must arise *ex improviso* which no human ingenuity can foresee. In the present case, in the supplemental written statement of respondent No. 1 it is one of his contentions that statements published and speeches made prior to the date of the election and the proclamation of the President calling upon the voters of the Bombay South Parliamentary Constituency to elect their representative to Lok Sabha are irrelevant and immaterial to the petition. When the case was opened on behalf of respondent No. 1, this plea in the form in which it was ultimately argued was specifically raised and on that very day when the evidence-in-chief of respondent No. 1 was given, he deposed about these facts. Even at that stage, no application was made of the nature now made. On the contrary, the petitioner proceeded with the trial and cross-examined respondent No. 1 on the evidence so given by him. This is a case where in any event, after the Counsel for respondent No. 1 opened his case and started leading his evidence, the petitioner knew that it was one of his contentions that on the day when article (Ex. 57) was published, respondent No. 2 had not held himself out as a prospective candidate. This is not a case where the petitioner was taken by surprise only by an argument in the course of the final address. Undoubtedly respondent No. 1 is taking advantage of the absence of evidence led on behalf of the petitioner but I cannot permit the petitioner to lead further evidence to fill in the gaps in his case which may be realised after the trial has gone on at great length, after respondent No. 1 closed his case and after the contention on his behalf was fully argued. It was because of these reasons that I disallowed the application made for framing an additional issue or for permitting the petitioner to lead further evidence or for re-calling respondent No. 2 for further examination.

The last ingredient that has to be considered in connection with the statement complained of is whether it is reasonably calculated to prejudice the prospect of respondent No. 2's election. The only averment in this behalf in paragraph 2L is that the wide publicity given to the false allegation inevitably must have affected the result of the election. In his evidence respondent No. 2 stated that the various false statements made by respondent No. 1 which he referred to in his evidence (including article Ex. 57) were made maliciously and deliberately with a view that his chances at the election may be damaged and those of respondent No. 1 may be enhanced and that they have in fact damaged his prospects at the election. The words in section 123(4) are that the statement of fact must be "a statement reasonably calculated to prejudice the prospects of that candidate's election". A division Bench of this Court in *Dattatraya v. Dattatraya* A.I.R. 1964 Bombay 244 had occasion to consider the effect and meaning of these words. It is there stated: The Legislature having in its wisdom used the expression "calculated" and not "designed" or "intended" it would be reasonable to hold that what is provided in sub-section (4) is that the publication of false statement of fact relating to the personal character or conduct must be such as would in the estimation of the Court, having regard to the nature of the publication, evidence tendered in Court and the surrounding circumstances have its natural and probable consequence of prejudicing the prospects of the candidate relating to whose personal character or conduct the publication has been made..... In defining corrupt practice, the emphasis is not so much on the intention of a publisher of a false statement of fact relating to the personal character or

conduct of a candidate, but the emphasis is on the probable consequences of prejudicing the prospects of the candidate by such a publication..... whatever be the intention of a publisher, if the natural and probable consequences of the publication of a false statement relating to the personal character or conduct be of prejudicing the minds of the voters the election cannot be said to be a free one. If on the other hand the reasonable and probable consequences are not likely to be so and yet the election has to be set aside merely because the publisher intended it to be so, the verdict given by the voters would be set at naught without just cause. A little later it is pointed out—What the Court has to decide in short is what would, in the circumstances of the case, be the effect of the impact of the publication left on the minds of the voters at the time they vote. Would it be such as would prejudice the voters against the candidate relating to whom the publication has been made? If the result of the inquiry would be that such would be the case, then the publication would be such which could be reasonably calculated to prejudice the prospects of the candidate. If on the other hand, the conclusion reached would be the effect of the impact would not and could not be of such a nature in the circumstances of the case, then the finding will have to be that the publication is not such which can be reasonably calculated to prejudice the prospects of the candidate. In other words, the Court has to determine what would be the effect of the impact of the publication left on the minds of the voters at the time of casting their votes. The circumstances which would have a bearing on the determination of this question would, in our opinion, be the relevant circumstances for the decision of this issue. The Court would, in the first instance ask the question what is the reaction on the candidate himself of the publication. Does he think that it is likely to prejudice his prospects or does he not think so? Has he published any contradiction? What is the reaction of his election agent and the supporters of the candidate? What have they done in this matter? What is the proximity of the date of the publication to the date of election? What is the nature of the allegations contained in the publication? It is indeed true that the Court would not blindly accept the candidate's or his election agent's evidence that it affected or prejudice his prospects, or blindly accept the statement of the publisher, that it did not prejudice the prospects of the candidate relating to whom the publication has been made.

The argument on behalf of respondent No. 1 is that the principles laid down in Dattatraya's case are no longer good law in view of the decision of the Supreme Court in *Sheopal Singh v. Ram Pratap*, A.I.R. 1965 S.C. 677. The contention is that the word "calculated" means designed; and if it is the intention of the publisher to prejudice the prospect of the candidate's election that by itself is alone sufficient to come to the conclusion that the statement is reasonably calculated to prejudice the prospects of the candidate's election and it is unnecessary to inquire about the reasonable and probable consequences of publication of such a statement. This contention, in my opinion, is partly correct and partly incorrect. The decision relied upon shows that the intention of the publisher is undoubtedly a relevant factor but the effect of the decision is to make the requirement a little more stringent. The result is that it should be established that the reasonable and probable consequences of the publication are likely to prejudice the prospects of the candidate's election and such was also the intention of the publisher.

In *Sheopal Singh's* case, the Supreme Court pointed out that the word "calculated" means designed; it denotes more than mere likelihood and imports a design to affect voters. It connotes a subjective element, though the actual effect of the statement on the electoral mind reflected in the result may afford a basis to ascertain whether the said statement was reasonably calculated to achieve that effect. The emphasis is on the calculated effect, not on the actual result, though the latter proves the former. But what is important to notice is that it is not necessary to establish by positive evidence that the voters, with the knowledge of the contents of the statement, were deflected from voting for the candidate against whom the statement was made.

The effect of this decision is that there should be both intention and likelihood, but the actual result need not be established. As interpreted by the Supreme Court, to fulfil this requirement were probable consequences may not be enough. The intention should also be established. At the same time, mere intention simpliciter is also not enough.

For determining the intention regard can be had to the principle that a man is presumed to intend the normal consequence of his act and that the proof of such intention can be had from the reasonable and probable consequence of his act.

Reference was made to the various circumstances referred to in Dattatrya's case which would enable the Court to come to a conclusion whether the statement is reasonably calculated to prejudice the prospects of the candidate's election. First, it is pointed out that the article (Ex. 57) was published in the issue of Blitz on November 5, 1966 while the polling took place on February 21, 1966. It was pointed out that there was thus a time lag of about 3½ months between the date of the publication and the polling day. It is not the case of the petitioner that these allegations were repeated by respondent No. 1 thereafter. The absence of repetition and the time lag between the date of the publication and the polling day is the factor to be taken into account in judging the reasonable and probable consequence of the publication. The further circumstance to be considered is what was the re-action of the candidate or his election agent to the publication. Evidence of respondent No. 2 shows that when his attention was drawn to some part of article (Ex. 57), he did not immediately go to his lawyers to take action against respondent No. 1 as at that time he was busy with his election and it was not possible for him to go to the lawyers at that time. In spite of his attention being drawn, there was no contradiction of the statement being made nor was any action taken by respondent No. 2 or his election agent. This inaction on the part of respondent No. 2 may be contrasted with the complaint that he filed against Mr. Madhu Limaye when allegations about associating his name in Aminchand Pyarelal's fraud in relation to rice import were made. Ex. X-4 is alleged to be the statement made by Mr. Madhu Limaye on December 10, 1966. (It is, however, not proved that such a statement was made by Mr. Madhu Limaye as alleged). On the next day, a complaint was filed in the Court of the Presidency Magistrate against Mr. Madhu Limaye for defamation for such a statement. The other circumstance that has to be noted is that even though the petitioner and respondent No. 2 were aware of the allegations made in article (Ex. 57) round about the time when his article was published, no reference thereto is to be found in the petition as originally filed. The evidence of the petitioner shows that he was aware of the allegations made in article (Ex. 57) round about the time when it was published, that he had brought these allegations to the notice of his Counsel when he gave instructions for drafting the petition, that in spite of such instructions no reference to these allegations is to be found when the petition was presented to this Court, that he was unable to give any reason why reference to these allegations was omitted at the time when the petition was filed in spite of specific instructions to the Counsel. The evidence of respondent No. 2 also shows that even though the points taken up in the petition were brought to his notice when the draft of the petition was prepared, he did not consider it necessary to make suggestion for incorporating such a plea in the petition. His evidence also shows that the gist of article (Ex. 57) was brought to his notice within three or four days of its publication and he read the whole of the article for the first time round about the time when the petition was filed. He has also said that the portion relating to him was marked with double red pencil, in the gist that was brought to his notice. His evidence also shows that before the petition was filed he had a talk with the lawyer for the petitioner about Aminchand Pyarelal. However, he did not read the whole of the petition before it was filed but his son-in-law Mr. Patkar and the petitioner told him about the points that were in the petition. Thus not only no action was taken either by respondent No. 2 or his election agent at or about the time when his attention was drawn to the article (Ex. 57) but no reference to this article was made in the petition when it was initially filed even though both the petitioner and respondent No. 2 had talk with the lawyer in connection with this article. The evidence further shows that it was later on when the entire article was placed in his hands that respondent No. 2 thought it necessary to incorporate this plea in his written statement and when the issue on his written statement was not permitted to be raised at the time of settling the issues, he suggested to the petitioner to incorporate in the petition the plea that he had taken in his written statement. Even the statements issued by respondent No. 2 prior to the polling day show that he did not consider that the statements published by respondent No. 1 by article (Ex. 57) were likely to prejudice his prospects at election. A report is published in the issue of Loksetta dated February 2, 1967 of the statement made by respondent No. 2. That report is Ex. 120. This report has reference to a statement made by respondent No. 2 deprecating the action of a person throwing a stone at the Prime Minister Mrs. Indira Gandhi at

Bhavaneshwar. He contrasted in this statement the nature of the election pro-
 posed in Bombay barring some petty incidents; after a certain meeting was over,
 violent incidents were happening in the country, no violent incidents have hap-
 pened in Bombay barring some petty incidents; after a certain meeting was over,
 some people attacked Shri Babubhai Chinoi, but they were found to be drunkards
 nobody should be blamed for that; on the whole, the standard of propaganda in
 Bombay is good and he hoped the same will be maintained upto the 18th. In the
 course of his statement, he expressed his confidence that there was no doubt that
 the Congress will win all the 32 seats in Bombay. That this is a correct report of
 the statement made by him is evident from his testimony, though a little later
 in his cross-examination he desired to make a distinction as regards the meaning
 to be attributed to the word propaganda in his statement. He said that by the
 words "standard of propaganda in Bombay is good" he wanted to convey that
 the meetings in Bombay were peaceful and good. He said that the word 'Pro-
 paganda' applies to meetings as well as other things; the word propaganda in-
 cludes posters, articles, handbills issued by either of the candidates at the election.
 When he was asked whether by the word 'standard' was meant level of the pro-
 paganda, he replied that by the word 'standard' he meant everything that it
 meant; he used that word only in reference to meetings. Even after the polling,
 respondent No. 2 expected to win the election by a very big margin, after having
 come to know that out of a total electorate of 4.58 lacs about 60 to 65 per cent.
 of the voters from Bombay South Parliamentary Constituency went to the Polls.
 On the night of the polling day, respondent No. 2 said that he expected to win
 the Bombay South Parliamentary Seat by a margin of about 50,000 votes. A
 report of this statement is to be found in the issue of Free Press Journal dated
 February 22, 1967 (Ex. 126). When respondent No. 2 was shown the report
 Ex. 126 he said that he did not show pessimism at that stage, that he was not
 then sure because the magnitude of the damage was to be revealed only after-
 wards, that on that day he felt that he would win by over 50,000 votes because
 that was the margin with which he always won. These statements of respondent
 No. 2 undoubtedly have to be taken into account while estimating the reasonable
 and probable consequences of the statement published by respondent No. 1
 through the article (Ex. 57). The statements made by respondent No. 2 even
 after the result of the election was declared also go to show that he did not at
 that stage try to connect his defeat at the election to any malpractice on the
 part of respondent No. 1 by false propaganda. At a certain stage while counting
 of votes was going on the result of the poll was fairly well anticipated. At that
 stage respondent No. 2 made a statement, report of which is to be found in the
 issue of Free Press Journal of February 24, 1967 (Ex. 128). At this time he said
 that the voters have rejected him as the representative to the Parliament, that he
 had served the City for the past 46 years honestly and devotedly; despite that
 verdict it would be his constant endeavour to serve them even more than what
 he had done in the past. He said that he had disappointed numerous workers
 and friends who helped him at the election and they would pardon him. In the
 evidence, he said that by the words "I have disappointed them, they will pardon
 me", he meant that they wanted him to be elected but he was defeated. When
 he was asked why at that time he did not say that the voters of Bombay South
 Parliamentary Constituency had rejected him as a representative to Parliament
 because they were fooled by false propaganda, he said that it was highly undig-
 nified to say such a thing at that time, it depended upon the way of looking at
 a thing why a statement of truth may look undignified at a particular time.

A report of the statement made by respondent No. 2 after the result of the
 election was declared was published in the issue of Bharat Jyoti dated February
 26, 1967 (Ex. 129). This exhibit shows that referring to his own defect, respon-
 dent No. 2 said that it was not the individual but the institution that mattered.
 "I shall never leave the Congress. There is no reason to mourn because I am
 defeated. I might have committed some sins for which God has punished me.
 I pray to the same Almighty to give me strength." Respondent No. 2 was asked:
 "When you said in this statement that you may have committed some sins for
 which God has punished you. Was the punishment by God referred to in his
 allowing you to get defeated at the election or anything else?" He said in his
 humble opinion, this was the way of expression of those who believe in God.
 By the words, "I might have committed some sins" he did not mean others had
 committed sins which resulted in his defeat. He explained the statement by
 saying that when it was made he regarded it undignified to say that others made
 false propaganda against him at the election.

There is some other report in that issue of Bharat Jyoti dated February 26, 1967, which goes to show that respondent No. 2 applied his mind to the factors which defeated him at the polls. Ex. 130 is the report of the statement of respondent No. 2 published in the issue of Bharat Jyoti dated February 26, 1967. This exhibit shows that respondent No. 2 hinted that he might refer to the Election Commission a number of malpractices that had been drawn to his attention regarding the parliamentary election in South Bombay. He said some persons who were not alive, had been shown as voters, some who did not belong to that area at all had come and cast their votes there. He added: "I personally suspect something. It is for the Election Commission to consider the matter". In this context, he mentioned that if more than 1,000 bogus voters were discovered, the whole election would have to be gone through again. Respondent No. 2 said that this report in Bharat Jyoti (Ex. 130) is substantially a correct report, but the figure of 1,000 bogus voters is not correct. He did not mention any figure of bogus voters. He did not remember whether on this occasion he said that one of the mal-practices was that there was false propaganda against him in respect of his personal character. A suggestion was made to him that after he consulted his lawyers that he came out with the theme that he was defeated at the election on account of the false propaganda against him in relation to personal character and that had materially affected his prospects at the election. He categorically denied the correctness of such an allegation.

These are the circumstances to be taken into account for judging whether the statement made by respondent No. 1 in publishing the article (Ex. 57) were reasonably calculated to prejudice the prospect of respondent No. 2's election. There was a time lag of about 3½ months between the publication of this statement and the polling day. Though the attention of respondent No. 2 was pointedly drawn to the statements made in this article, he appears to have ignored them and took no action thereon, that even when the petition was drafted by the lawyers of the petitioner, this article was present to the mind of the petitioner as well as respondent No. 2 but no grievance was made that by publishing this false statement, respondent No. 1 committed any corrupt practice. Article (Ex. 57) is not at all referred to in the election petition as initially filed; that during the election period, respondent No. 2 considered that the standard of election propaganda in Bombay was good even though his attention was drawn to the gist of article Ex. 57; that even on the night of the polling day respondent No. 2 expected to win by a margin of at least 50,000 votes. His immediate re-action after the result of the poll was declared was that the voters of Bombay (South) have rejected him, that he might have committed some sins for which God has punished him, that when his attention was drawn to some of the malpractices at the election he referred to the extent of bogus voting at the poll but did not refer to publication of a false statement in relation to his personal character and conduct as a malpractice.

17th January 1968.

These factors and circumstances militate against the conclusion that the statements in the article (Ex. 57) were made with a view that the chances of respondent No. 2 at the election may be damaged or that they have in fact damaged his prospects at the election. While considering this ingredient, the emphasis is on the calculated effect and not on the actual result, though the latter proves the former. In the present case the petitioner has failed to establish that the statements quoted in paragraph 2L of the petition are reasonably calculated to prejudice the prospects of respondent No. 2's election.

The argument then was that the theme of this article (Ex. 57) was kept alive by other prominent leaders of the party to which respondent No. 1 belonged. It was said that Dr. Lohia repeated the allegations in Parliament on December 1, 1967; that on coming to know of this statement, the next day in Parliament respondent No. 2 put forth a challenge to Dr. Lohia to repeat the allegation outside the House in order that appropriate action may be taken against him. It is further alleged on behalf of the petitioner that similar allegations were repeated by Mr. Madhu Limaye as was purported to be shown by Ex. X-4 (which is not proved) and respondent No. 2 filed a criminal complaint against him for making such allegations. It is further said that in the issue of Maratha dated February 14, 1967 (Ex. X-7) it is reported that respondent No. 2 could not reply as to where the large quantity of rice in transit transhipped by A. P. J. Transport Co. went underground and to what extent respondent No. 2 and how many Food Ministers after him had been involved in that matter. These statements by Dr.

Lohia, Mr. Madhu Limaye and the report in Maratha (Ex. X-7) are not relied upon by the petitioner as independent instances of the corrupt practice. Respondent No. 1 cannot be saddled with liability of what Dr. Lohia or Mr. Madhu Limaye said or are alleged to have said or for what was published in Maratha dated February 14, 1967. The reasonable and probable consequences of publication of article (Ex. 57) are merely to be judged having regard to the various circumstances attending thereto and while judging such consequences of what Dr. Lohia or Mr. Madhu Limaye said or what was published in Maratha (Ex. X-7) cannot be taken into account.

The above discussion shows that the several essential ingredients of a corrupt practice under section 123(4) of the Act are not established in the present case in relation to the publication of the article (Ex. 57) in the issue of Blitz dated November 5, 1966. The result, therefore, is that the charge levelled against respondent No. 1 in paragraph 2L of the petition is not proved and established.

This brings us to the second instance of a corrupt practice under section 123(4) of the Act. It relates to a speech made by respondent No. 1 at a public meeting held at Shivaji Park on January 31, 1967. This meeting was addressed not only by respondent No. 1 but also by the other prominent opposition candidates. viz., Acharya Atre, M. R. Gokhale, Dange and Krishna Menon.

No averments were made in the petition when it was presented in connection with this speech made by respondent No. 1 at the Shivaji Park meeting. In paragraph 2J of the petition it is averred that false statements in relation to character and conduct of respondent No. 2 were made by respondent No. 1 and at the instance and connivance of respondent No. 1, Maratha published certain articles, extracts of which are therein reproduced. These extracts do not refer to the report of the speech made by respondent No. 1 at the meeting at Shivaji Park. At the end of this paragraph 2J it is pleaded that similar false statements in relation to respondent No. 2's character and conduct were published in the various issues of the daily Maratha. Dates of about 34 issues of Maratha are thereafter given. But the reports relied upon were neither referred to in paragraph 2J of the petition nor were the relevant extracts therefrom annexed as annexures to the petition. Thus when the petition was presented on April 7, 1967, it was not clearly pleaded that the petitioner had an intention to rely upon the speech made by respondent No. 1 at the Shivaji Park meeting held on January 31, 1967 as an instance of a corrupt practice under section 123(4). At or about the time when the issues were being settled in this petition, the petitioner was given liberty to annex to the petition the relevant extracts from the issues of Maratha referred to in paragraph 2J of the petition which he wanted to rely upon. That liberty was given after the expiry of the period of 45 days from the date of declaration of the result which is the prescribed period for presenting the election petition to challenge the validity of the election. Pursuant to this liberty, one of the extracts relied upon in Ex. E to the petition is an extract from the issue of Maratha dated February 1, 1967 containing the following words:

"Patil has a technique of winning elections. He divides the linguistic group.... It is true that even God cannot defeat Patil because God cannot exchange ballot boxes. He (God) is honest unlike Patil...."

In view of the vagueness of the averments in paragraph 2J of the petition, by Advocate's letter dated July 3, 1967 (part of Ex. 66) respondent No. 1 required the petitioner's Advocate to furnish particulars *inter alia* as regards the time, day and place where the false statements in relation to the character and conduct of respondent No. 2 were made by respondent No. 1. These particulars were furnished by the petitioner's Advocate's letter dated August 4, 1967 (also part of the same Ex. 66). Item 1 of paragraph 11 of this letter gave the particulars about this meeting. It says that a meeting was held at Shivaji Park in the evening of January 31, 1967, that Mr. Rajani Patel was the President at this meeting and that respondent No. 1, Atre, Dange, Gokhale and V. K. Krishna Menon were the speakers at this meeting. The petitioner, however, did not consider it necessary to reproduce here the quotation of the speech of respondent No. 1 which, according to him, constituted the corrupt practice.

While the evidence of the petitioner was being taken on September 12, 1967, an application for amendment of the petition was made on behalf of the petitioner. By my order dated September 16, 1967, I partly allowed that amendment application. One of the paragraphs added to the petition pursuant to this order is paragraph 2J(i). In this paragraph the petitioner has pleaded the statements made

by respondent No. 1 at this meeting which, according to him, constitute the corrupt practice under section 123(4). It is averred in paragraph 2J(i): During the course of his address, respondent No. 1 stated that respondent No. 2 used dishonest means and techniques to win the elections. He clearly insinuated that respondent No. 2 won elections by tampering with the ballot boxes or substituted the same. Respondent No. 1 further stated that even God could not defeat respondent No. 2 because unlike respondent No. 2, God was not dishonest. In substance the respondent No. 1 alleged during the course of his address that respondent No. 2 was a man of low character and that he had stooped to commission of criminal offences with the object of winning elections. The said allegation was clearly false and the same are false statements of facts in relation to personal character of respondent No. 2 within the meaning of section 123(4) of the Act. Respondent No. 1 deliberately and maliciously made the said statements. He believed them to be false and he did not believe them to be true. The report of the above speech was published in the issue of Maratha dated February 1, 1967. By his further supplementary written statement filed on September 22, 1967 respondent No. 1 denied having uttered the words attributed to him in paragraph 2J(i) of the petition during the course of his speech at this meeting. His contention in this written statement is that he never made the statements which are pleaded in paragraph 2J(i). So, the question whether the statements are false or that he believed them to be false or did not believe them to be true or that they are in relation to the personal character of respondent No. 2 did not arise. He alleged that the report published in Maratha dated February 1, 1967 which was referred to in Ex. E to the petition was not a correct report of his speech at this meeting.

The contention on behalf of respondent No. 1 at the trial is that during the course of his speech at Shivaji Park on January 31, 1967, he did not utter the words which are attributed to him in paragraph 2J(i) of the petition. Alternatively, it is submitted on his behalf that in case the Court takes the view that those words were used by him in the course of his speech, they are merely an expression of opinion and do not amount in law to publication of a statement of fact; that it is not averred in the petition nor is it proved at the trial that respondent No. 2 was a candidate when respondent No. 1 made this speech at the Shivaji Park meeting and that it is not averred in the petition that the words uttered by him at this meeting were reasonably calculated to prejudice the prospects of respondent No. 2's election.

There is considerable evidence both documentary and oral led as regards the speech made by respondent No. 1 at this meeting. The documentary evidence primarily consists of the proved reports of the speech of respondent No. 1 which are published in various newspapers on the next day. These reports are published in the issue of Indian Express dated February 1, 1967 (Ex. 166), in the issue of Times of India of the same date (Ex. 178) and in the issue of Maharashtra Times of the same date (Ex. 201). The authenticity of these reports is proved by examining the respective reporters who covered this meeting on behalf of these newspapers.

Ex. 166, the report in Indian Express, shows that during the course of his speech, respondent No. 1 said that respondent No. 2 as the ring leader of the circus (BPCC) was creating rifts amongst the people on the language, class and religious basis; that respondent No. 2 had himself admitted at a meeting at Dana Bunder that he once suggested to President Kennedy that America should produce more rice to meet India's demand; that at this rate, respondent No. 2 would endanger the country's freedom; that even now one-fifth of the country's money was being controlled by America and that if opposition parties formed a Government at the centre, its first programme would be to empty ill-gotten wealth amassed by Congressmen and capitalists who had been sheltering under the ruling party.

Ex. 178, the report in Times of India, shows that at this meeting respondent No. 1 made a reference to the food shortage and other problems concerning the country and said the Congress was unable to solve them. He advised the voters not to ask whether one candidate belonged to Maharashtra or not, spoke a particular language or professed a particular religion; what was important was the programme of the party or the candidate.

Ex. 201, the report in Maharashtra Times, shows that at this meeting respondent No. 1 said that in order to make the country prosperous and self-respecting, the Congress must be defeated at the election; that in the last 20 years, Congress

has harmed this country to the maximum; that if this party was re-elected, it would do the equal amount of harm in the next five years; that while respondent No. 2 was a Food Minister, he set down a policy of making this country dependent upon America for food; that because of the lack of tons of foodgrains imported from America, one-fifth of the national currency is in the hands of America; that in order to retain power in their hands, Congress has created walls of differences of opinion against Marathi and non-Marathi linguistic groups and that this time people have demolished these walls.

These are the only proved reports of the speech made by respondent No. 1 at this meeting. In these reports apart from what is stated above, there is no other reference to the speech of respondent No. 1 at this meeting. In none of these reports it is stated that respondent No. 1 in the course of his speech clearly insinuated that respondent No. 2 won elections by tampering with the ballot boxes or substituting the same or that he said that even God could not defeat respondent No. 2 because unlike respondent No. 2 God was not dishonest.

The absence of reference to such a part of the speech in these proved reports was sought to be explained by enunciating a sober policy which is normally adopted by an independent newspaper. The evidence of B. V. Rao (Ex. 162), the Chief Reporter of Indian Express shows that if in a report submitted by a reporter, there is anything not properly reported or if there is something which is defamatory or in bad taste, he would delete it. He also said that apart from him, the Chief Sub Editor on duty would do this part of the duty. That this is a salutary policy adopted by a sober newspaper is also evident from the evidence of Dinkar Waman Ranadive (Ex. 199), the Reporter of Maharashtra Times. He in his evidence says that as a matter of policy, Maharashtra Times does not publish matters which are defamatory or constitute personal attacks or which are sub judice and he as reporter had instructions to exclude such matters from his reports. In view of this consistent evidence of these witnesses as regard the normal policy of an independent newspaper, a mere absence of a reference to the speech relied upon in paragraph 2J(i) of the petition in Exs. 166, 178 and 201 by itself is not sufficient to come to the conclusion that respondent No. 1 did not utter the words attributed to him during the course of his speech at Shivaji Park. The absence of a reference to this part of the speech in the proved reports in newspapers is however, a factor to be considered along with the other evidence in the case.

It was urged on behalf of respondent No. 1 that the policy above enunciated is not rigidly followed by every sober newspaper. In this connection reference was made to a report published in Indian Express dated November 21, 1966 (Ex. X-73). This exhibit purports to be a report of a speech alleged to be made by Mr. Madhu Limaye at Calcutta. In this report it is alleged that Mr. Atulya Ghosh and respondent No. 2, then Railway Minister, used the Delhi anti-cow slaughter protest to remove Mr. Nanda from the Cabinet, that a few days before the movement started, they had given an ultimatum to Mr. Nanda that if he wished to stay on, he would have to drop the cases against Sunil Das and Tarapada Chakravarti who had been arrested for alleged espionage sometime ago, that big monopolists who had been gunning at Mr. Nanda for a long time also acted in collusion with a powerful faction of the Congress whose leadership was syndicated by Mr. Atulya Ghosh, respondent No. 2 and Mr. Reddy to remove Mr. Nanda and that many Goondas were hired in Calcutta and taken to New Delhi at the instance of the involved faction of the Congress. Publication of such a report in Indian Express is, undoubtedly, inconsistent with the policy deposed to by B. V. Rao in his evidence. But neither the attention of B. V. Rao, the Chief Reporter of that paper, nor of Ramkumar, a reporter of that paper, was drawn to the report (Ex. X-73), nor was their explanation sought on the question of publication of such a report in view of the policy enunciated. As the attention of these witnesses was not drawn to Ex. X-73, from a mere isolated instance in this case, it will not be proper for me to conclude that the policy deposed to by B. V. Rao is not the normal policy that is ordinarily followed by an independent sober newspaper.

Besides these proved reports, in the course of the trial reference has been made to certain unproved reports in several newspapers of the speech made by respondent No. 1. Reference was made to the issue of Maratha dated February 1, 1967 (Ex. X-23), to the issue of Patriot dated February 1, 1967 (Ex. Y-11) and its issue dated February 2, 1967 (Ex. X-78), the issue of Blitz dated February 8, 1967 (Ex. X-56) and the issue of Link dated February 12, 1967 (Ex. X-82). In some of these reports reference is to be found to the part of the speech pleaded in paragraph 2J(i) of the petition.

In Ex. X-23 while reporting the speech of respondent No. 1, it is alleged that in the course of his speech he said: "It is true that even God cannot defeat Patil because God cannot exchange boxes. He is honest unlike Patil. That is why this battle is very important."

Ex. Y-11 is the report of this speech of respondent No. 1 in the newspaper Patriot immediately on the following day. This report does refer to the various points made by respondent No. 1 during the course of his speech but it does not indicate that during the course of his speech respondent No. 1 referred to God and/or ballot boxes in the manner pleaded in paragraph 2J(i) of the petition. However, on the following day, i.e., on February 2, 1967 a further report of the speech of respondent No. 1 appears to have been published. That report is Ex. X-78. Ex. X-78 *inter alia* shows that during the course of his speech respondent No. 1 said: "Mr. Patil's supporters claim that even God could not defeat their boss. I agree, said Mr. Fernandes. God is a clean fighter and will not take to switching ballot boxes."

In the issue of Blitz dated February 8, 1967 (Ex. X-56) a news item under the heading "Mammoth rally hails the redoubtable five" was published in relation to the proceedings of this Shivaji Park meeting. It reports that during the course of his speech, respondent No. 1 *inter alia* said: He was standing against respondent No. 2 to explode the myth that respondent No. 2 could not be defeated in Bombay, that not even God can win against respondent No. 2.

In the issue of Link dated February 12, 1967 (Ex. X-82) a long write-up under the heading "The battle of Bombay" is published. In this write-up at one place it is stated: It was not entirely in fun that respondent No. 1 said recently that he was willing to accept the claim of the Congress that even God could not defeat Patil. God was a clean fighter. That was Fernandes' way of acknowledging that his adversary had many trumps up his sleeve.

No attempt whatsoever has been made on behalf of the petitioner to prove the truth of the statements made in these reports (Exs. X-23, Y-11, X-78, X-56, and X-82). The contents of these reports are unproved and do not constitute evidence in this case and no reliance can be placed thereupon to come to any finding on the issue arising from the averments in paragraph 2J(i). Some questions in respect of these unproved reports were put to respondent No. 1 and other witnesses examined on his behalf and the evidence of these witnesses would have to be considered while considering this question.

Apart from a general argument as narrated above, a special argument was advanced in relation to Ex. X-23, the report in Maratha dated February 1, 1967. The argument ran thus: Atre is the editor, publisher and owner of the newspaper Maratha, that there is overwhelming evidence to show that Atre is the agent of respondent No. 1 as understood under election law, that Ex. X-23 amounts to an admission by Atre as such agent of respondent No. 1 and that it being an admission by an agent, the contents thereof should be regarded as automatically proved by a mere production thereof. The argument in the alternative is that Ex. X-23 is a news item, that such a news item must have been published as a result of the information brought in by the reporter of Maratha who covered this meeting, that such a reporter is in law sub-agent of respondent No. 1 employed by Atre in his capacity as agent, that the news item, in any event, amounts to an admission by a reporter as such sub-agent and its contents are, therefore, automatically proved and are binding on respondent No. 1.

A little earlier, a similar contention urged in connection with the report in Maratha (Ex. X-96) wherein the news about respondent No. 2 holding himself out as a candidate is published is already rejected. The reasons for holding that the report (Ex. X-96) is not automatically proved by its mere production at the trial and that it is not an admission either by Atre as agent or by a reporter as sub-agent apply *mutatis mutandis* to the report (Ex. X-23). Ex. X-23 cannot be regarded as automatically proved by its mere production and cannot be regarded as an admission either by Atre as agent or respondent No. 1 or by a reporter of Maratha as sub-agent of respondent No. 1.

Considerable oral evidence is led in relation to the speech made by respondent No. 1 at this meeting. A number of witnesses who deposed that they were present at this meeting have been examined on either side. The petitioner himself was not present at this meeting, but on his behalf, 7 witnesses have been examined who have given evidence in relation to the speech made by respondent No. 1 at this meeting. Respondent No. 1 himself has given evidence of what he

said at this meeting. Besides him, three other witnesses are examined to depose to what he stated at this meeting.

Before scrutinising the evidence of these witnesses, it is necessary to note what each one of these witnesses deposes about the speech of respondent No. 1 at this meeting.

The first witness who has given evidence about this speech of respondent No. 1 is Yeshwant Mahadik (Ex. 107), an employee in Swastik Engineering Works situate at C. P. Tank, Bombay. He deposed that he was present at this meeting and, according to him, during the course of his speech, respondent No. 1 said that people say that respondent No. 2 has different technique to win at the elections; that he changes the ballot boxes and gets himself elected; that he (respondent No. 1) was contesting elections at that time and he would see that the ballot boxes will not be changed and that he would destroy that technique. This is all that he has deposed to about the speech of respondent No. 1 at this meeting.

The second witness who has given evidence in relation to this speech of respondent No. 1 is K. S. Ramkumar (Ex. 165), a reporter of Indian Express who covered this meeting on behalf of this newspaper. He has proved the report in Indian Express dated February 1, 1967 (Ex. 166). This is what he deposed to of the speech of respondent No. 1 at this meeting: Respondent No. 1 said that he had chosen a difficult constituency deliberately with a view to show that even respondent No. 2 can be defeated; that otherwise, he would have selected any other constituency, perhaps Satara; that he turned to the audience and said that he alone could not defeat respondent No. 2; that some people say that respondent No. 2 has his own ways and means of winning elections. He further said that he agreed with such people that even God could not defeat respondent No. 2 because God was honest unlike respondent No. 2; that respondent No. 2 won elections by changing ballot boxes; that he and his election agents would be extra careful to see that respondent No. 2 would not get away with his trick; that he described BPCC as a circus and respondent No. 2 as its ring leader. He said that respondent No. 2 was creating dissensions amongst people of different religions, caste and language. He referred to a statement which respondent No. 2 had made at a public meeting that he had asked President Kennedy to grow more rice in America to meet India's requirement. He said that if the opposition would come to power, it would first empty the ill-gotten wealth of capitalists and Congressmen. He referred to SSP's programme and said that what his party could do for the people, he would do for them. That is all he remembered of the speech of respondent No. 1 at this meeting. In his cross-examination he further said that at this meeting respondent No. 1 stated: How could he defeat respondent No. 2? But he did not say that God could not defeat respondent No. 2 because God did not contest the elections. Respondent No. 1 said that voters of South Bombay could definitely defeat him and that on 22nd February when ballot boxes were opened, it would be found that respondent No. 2 was defeated.

The third witness who has given evidence about this meeting is S. Dharmarajan (Ex. 104), a reporter of Times of India. This witness was initially examined on behalf of the petitioner to prove what respondent No. 1 said at a press conference held by him at the Bristol Grill Restaurant. When by my order dated September 15, 1967 I allowed the petitioner to amend his petition, I gave liberty to respondent No. 1 to make an application for recalling any witness examined on behalf of the petitioner. In view of such liberty being given, an application for recalling this witness for further cross-examination was made on behalf of respondent No. 1 and that was granted. After he was recalled for further cross-examination, S. Dharmarajan was asked whether he had covered this meeting held at Shivaji Park and he answered in the affirmative. His recollection, however, of what happened at this meeting is extremely vague. He did not remember whether at this meeting, he took down his notes in shorthand or in longhand. He remembered that he took down notes of the speeches made at the meeting and submitted his report to the Sub Editor. That report was prepared by him from the notes taken down at the meeting. The report was published in the issue of Times of India dated February 1, 1967 and is Ex. 178. He was specifically asked whether he remembered to have taken down in the notes that respondent No. 1 in the course of his speech said: "Respondent No. 2 has a technique of winning elections. He divides the linguistic groups. It is true that even God cannot defeat respondent No. 2 because God cannot exchange ballot boxes. He (God) is honest unlike respondent No. 2". He replied that he did not remember whether he took down such words in his notes. He was also asked whether if such statements were made by respondent No. 1 in his speech, he would take them down in his notes or not. He replied that that would depend upon his judgment at that

time. He was not able to say whether his report of the speech of respondent No. 1 was substantially altered by the Sub Editor when it was published in the issue of Times of India the next day. As these questions put to S. Dharmarajan were not germane to the evidence that he had given in chief, an application was made by Mr. Jethmalani to cross-examine this witness in respect of the evidence given by him after he was recalled. That application was granted and when he was cross-examined by Mr. Jethmalani, he said that he did not remember whether in his speech respondent No. 1 referred to respondent No. 2 by his name. He did not remember whether the report that he submitted of the speech of respondent No. 1 was longer than the one published in Ex. 178. He said that normally, it was his practice not to reproduce matters which are defamatory or patently false. Sometimes if he introduced such a matter in his report, the Sub Editor in exercise of his discretion might delete it therefrom. The evidence of this witness, therefore, does not carry the case of either party any further.

Besides these witnesses, a group of four witnesses has been examined in this case. These witnesses are the ordinary residents of Dadar and they have deposed that they were present at this meeting together.

Ganesh Tanksale (Ex. 168), an employee in the Commercial Department of the Central Railway, is the first witness in this group. He deposed that he was interested in listening to political speeches and attended many meetings addressed by leaders of various political parties. Amongst those meetings, he also attended the meeting at Shivaji Park which was addressed by respondent No. 1 and the other prominent candidates of the opposition parties. This is what he deposed to of the speech of respondent No. 1 at this meeting: Respondent No. 1 addressed the meeting in Marathi. He said that five stalwarts of socialist pattern were here today; that we must defeat respondent No. 2 who is the leader of BPCC, a bastion of capitalists; that as he is a Marathi man, efforts are being made to support him on the ground that he is a Marathi man; that respondent No. 2 has behaved against the interests of Maharashtra; that he (respondent No. 1) made efforts to introduce Marathi in Corporation; that upto 1940-45 those Marathi ladies who were working in factories in Bombay were thrown out because of the manipulation of laws made by industrialists; that both Corporation and Government were trying to deprive them of their work; that he (respondent No. 1) established the union of hawkers for those women who were thrown out of their work; that he (respondent No. 1) was charged that he was trying for the persons from other States; that when Menon was in Congress, he was not our friend; that some of our friends thought that Menon was near them, though he was in the Congress; that he (respondent No. 1) did not feel like that; that Menon was Congresswala; so from their point of view, he was not a good man; that amongst Congressmen, he (respondent No. 1) did not make distinction between Left and Right or between capitalists and labourers; that all Congressmen are thieves, but now Menon has come out of the Congress, he was with them for the cause of socialism; that their fight is against poverty and unemployment and might of the capitalists in this country; that BPCC is a stronghold of capitalists; that respondent No. 2 is a Dada thereof; that people think that respondent No. 2 cannot be defeated; that it is true that he (respondent No. 1) also thought so because respondent No. 2 had a magic of exchanging boxes and changing votes which nobody else had; that even if God himself stood against respondent No. 2, he could not defeat him because God was honest, respondent No. 2 was not like that; that respondent No. 2 endeavoured to divide votes on the basis of language; that he succeeded upto now, but hereafter this would not be; that people had known this trick of respondent No. 2; that he urged that people should take courage and be awake and show to the world that respondent No. 2 could be defeated. This was the substance of what respondent No. 1 said, according to Tanksale, at this meeting. In his cross-examination when the case of respondent No. 1 was put to him, he said that respondent No. 1 in the course of his speech did not say that the exasperated Congress workers told his workers that even God could not defeat respondent No. 2. According to him, respondent No. 1 said: How could he defeat respondent No. 2? But he did not say that God could not defeat respondent No. 2 because God did not contest elections. Respondent No. 1 said that voters of South Bombay could defeat respondent No. 2 and when the ballot boxes were opened on February 22, it would be seen that respondent No. 2 is defeated.

The next witness in this group is Moreshwar Raghunath Bhide (Ex. 169), an employee in Messrs. Bennett Coleman & Co. Ltd. He says that he is an intimate friend of the last witness Tanksale and he along with Tanksale and the other two witnesses attended the meeting at Shivaji Park. This is what he deposed to of the speech of respondent No. 1 at this meeting. According to him, respondent No. 1

at this meeting said that the present condition of India was created by Congress in general and by BPCC and respondent No. 2 in particular; that as he was a non-Maharashtrian, he was being charged as anti-Maharashtrian, but that was not true; that although he was a non-Maharashtrian, he had always seen the interest of the Maharashtrians; that during the tenure of respondent No. 2 as the Railway Minister, there were many rail accidents in India; that, therefore, he should have resigned, but he did not; that during the tenure of respondent No. 2 as Food Minister, the food situation in India worsened; that, therefore, he should have resigned, but he did not; that he is a leader of BPCC which is the stronghold of capitalists; that he must defeat respondent No. 2, but as respondent No. 2, was a Goonda and was supposed to be election expert, it was very difficult to defeat him; that even God could not defeat respondent No. 2 because God was honest and respondent No. 2 was not so; that God would not exchange ballot boxes as respondent No. 2 does; that respondent No. 2 got elected by creating confusion among the people of different languages, but that this time they would not allow him to do so; that people would have to be very vigilant to defeat respondent No. 2. This, according to Bhilde, was all that respondent No. 1 said at the meeting. When the case of respondent No. 1 was put to him in cross-examination, he said that it is not true that respondent No. 1 in the course of his speech said that the exasperated Congress workers told his workers that even God could not defeat respondent No. 2. He did not remember whether respondent No. 1 said: How could he defeat respondent No. 2? Respondent No. 1 did not say that God could not defeat respondent No. 2 because God did not contest elections. In some context respondent No. 1 did say that the voters of South Bombay could defeat respondent No. 2 and that when ballot boxes were opened on February 22, it would be seen that respondent No. 2 was defeated.

The third witness in this group is Balwant Gajanan Khambete (Ex. 17), an employee in the Commercial Department of the Central Railway at Dadar. He remembers to have attended this meeting and has deposed to what respondent No. 1 said in the course of his speech. According to him, respondent No. 1 at this meeting said that propaganda was made against him that he was a non-Maharashtrian, that in order to defeat his opponent, respondent No. 2 was finding new ways, that in 1957 and 1962, he created a rift between linguistic groups and thereby he won the elections; that he did not find it proper to follow this very way this time, that is why he had started Shiv Sena as a new thing; that it was very difficult to defeat respondent No. 2; that if God contested against him, he (God) would be defeated at the election; that he is an expert in exchanging ballot boxes. That is all, according to Khambete, respondent No. 1 said at this meeting. In his cross-examination he says that respondent No. 1 in his speech also stated that although he was a non-Maharashtrian, how earnestly he was working for Maharashtrians; that he made a reference to all that he had done for hawkers in Maharashtra; that he was contesting against a very great personality; that respondent No. 2 might get the benefit because the atmosphere of Maharashtrians and non-Maharashtrians was created; that respondent No. 2 had got new technique; that he found some new plans and won elections, e.g., rift amongst the linguistic groups, Maharashtrians and non-Maharashtrians; that when he found that this was of no avail, he changed the ballot boxes because he was an expert in that art; that if people remained awake this time, he (respondent No. 2) would not be able to do it. He did not remember whether respondent No. 1 said anything about the Chief Minister Mr. Naik or that respondent No. 1 made any mention about Satara or whether he made any reference to the city of Washington or whether he mentioned anything about Jai Prakash Narain. When the case of respondent No. 1 was put to him, he said that it was not true that respondent No. 1 stated at this meeting that the exasperated Congress workers told his workers that even God would not be able to defeat respondent No. 2 or that the Congress workers said: How could he defeat respondent No. 2, if God could not defeat him, or that God could not defeat respondent No. 2 because God does not contest election. According to Khambete, respondent No. 1 did say that if they were alert and if he (respondent No. 2) was not allowed to play his tricks, the voters of South Bombay could definitely defeat respondent No. 2 and that when ballot boxes were opened on February 22, it would be seen that respondent No. 2 was defeated.

The last witness in this group is Sudhakar Bhaskar Bendre (Ex. 172), an employee in Goodlass Nerolac Paints Pvt. Ltd. He admits that he is an intimate friend of the other three witnesses and attended this meeting at Shivaji Park along with his three friends. According to him, respondent No. 1 said that at this meeting that he was opposing the election of respondent No. 2; that it would be shown on February 22 that respondent No. 2 could be defeated; that respondent No. 2 had a technique; that he divided voters on the basis of language; that this

technique would not succeed this time; that even God could not defeat respondent No. 2 because God could not change ballot boxes; that God was honest; that He (God) was not like respondent No. 2; that respondent No. 2 and his Government have mortgaged our nation to America. That is all Bendre remembered of the speech of respondent No. 1 at this meeting as deposed to by him in his evidence-in-chief. In his cross-examination he reaffirmed that as regards the speech of respondent No. 1 he remembered only what he has stated in his evidence-in-chief; that respondent No. 1 said many other things in his speech but he did not remember anything else; that he referred to the food policy of Chief Minister Mr. Naik. A little later in his evidence he said that respondent No. 1 said that when Krishna Menon was in the Congress, he was not like other Congressmen; that he had no respect for him; that he (Krishna Menon) left Congress and he was fighting against Congress and that they should support him. When the case of respondent No. 1 was put to him, he said that it was not true that respondent No. 1 in his speech stated that the exasperated Congress workers told his workers that even God would not be able to defeat respondent No. 2 or that his workers said that even God could not defeat respondent No. 2, how then could he defeat respondent No. 2 or that God could not defeat respondent No. 2 because God could not contest elections. According to Bendre, respondent No. 1 said at this meeting that voters of South Bombay could definitely defeat respondent No. 2 and that would be so if they were vigilant and that on 22nd February when the ballot boxes were opened, it would be found that respondent No. 2 was defeated.

This is the entire direct evidence led on behalf of the petitioner as regards the speech made by respondent No. 1 at this meeting at Shivaji Park held on January 31, 1967.

Respondent No. 1 himself has given evidence as regards what he said at this meeting. He said that his speech during the election generally had one theme—criticism of the performance of the Congress party, especially in regard to food, prices, unemployment and to Bombay's problem, specifically house and water supply. At Shivaji Park meeting, he spoke on these problems and said that Government had failed to produce adequate food for the country by not providing proper incentives to the farmers and by not providing irrigational facilities; that Government contemplated building major dams but did not bother about minor irrigation; that responsible persons in Government including the Chief Minister of Maharashtra gave slogans which they never fulfilled; that he referred to a statement made by the Chief Minister Mr. V. P. Naik in October 1965 that if he failed to solve Maharashtra's food problem in two years, he would go to the gallows; that referring to this statement, respondent No. 1 said that other persons might have forgotten this statement, but he remembered it and that if by October 1967 he failed to solve the food problem of Maharashtra, he would go and hang him; that respondent No. 2 was to a great extent responsible for the crisis of food in the country; that he referred to a statement made by respondent No. 2 in London in July 1961 on his return from U.S.A. that the main problem was now surplus food and that India should not produce any more food; that he (respondent No. 1) criticised PL 480 deals and referred to what Professor John Lewis wrote in his book "Quiet Crisis in India"; that he referred to a passage in the book where the author has aired the fears of this country that ultimately PL 480 deals would enslave India to America; that he quoted a statement by the author that one out of five Indian rupees was owned by Government of U.S.A. as a result of PL 480 and allied aids; that he charged respondent No. 2 for not producing enough food in the country, for importing food from America and for not giving proper incentives to Indian farmers; that he referred to a speech made by respondent No. 2 at Dana Bunder where he (respondent No. 2) is alleged to have stated that he had been to America and asked for rice and that when he was told that they had no rice, he suggested to President Kennedy that America should set apart 10 per cent of the land for growing rice for India and President Kennedy accepted his suggestion. He said that he rebutted some of the criticism that the Congress was making against him, viz., that he was a non-Maharashtrian. He referred to a statement alleged to be made by respondent No. 2 that so long as the sun and the moon are there in the sky, there would be no Maharashtra with Bombay as its capital; that he had been to prison three times in Samyukta Maharashtra agitation; that he had no choice about the place of his birth; that he did not tell his mother that he would like to be born in Mangalore; that if he had a choice, he would have suggested that he would like to be born in Satara and that respondent No. 2 would have suggested that he should be born in Washington D.C.; that some people who complained against him that he was not a Maharashtrian went and told Kannada people that the Kannada people must ask him whether he had a Kannada blood in him as he advocated for the inclusion of Belgaum and Karwar

as part of Maharashtra; that Congress workers, very much exasperated, were telling his workers that leave alone Fernandes, even God could not defeat respondent No. 2; that he conceded that God could not defeat respondent No. 2 because God was not fighting election; that he could not defeat respondent No. 2 because he did not have the means; that the press and money were all against him; that he was telling the voters of South Bombay that they could defeat respondent No. 2; that when the ballot boxes were opened on 22nd February, the world would see that respondent No. 2 was defeated; that he appealed to the voters to vote for the four other candidates who were on the platform. He deposed that in his speech he did not say: "It is true that even God cannot defeat Patil because God cannot exchange ballot boxes. He (God) is honest unlike Patil. Here lies the importance of this battle." He denied that he was giving false evidence with a view to deny what he said at this Shivaji Park meeting. He said that it never occurred to him during the election campaign that ballot boxes are changed or that they would be or could be changed or tampered. In his cross-examination he said that at this meeting he did not say that respondent No. 2 had created Shiv Sena or that he (respondent No. 2) had anything to do with it or that he divided the people according to language, caste, etc. or that if his party came into power, he would unearth the wealth hoarded by respondent No. 2 and his relatives. When his attention was drawn to the report in *Blitz* (Ex. X-56) he said that a part of the report therein was correct and a part was incorrect. According to him, the following portion of the report in *Blitz* of his speech was correct: He was standing against respondent No. 2 to exploit the myth that respondent No. 2 could not be defeated in Bombay; that not even God can win against him; that he recalled respondent No. 2's opposition to the formation of Maharashtra State; that at that time he (respondent No. 2) said that as long as there was sun and the moon in the sky, there would be no State of Maharashtra; that he criticised respondent No. 2's food policy which led India into American bondage; that respondent No. 2 not only kept on importing PL 480 wheat, but he advised America to grow more rice to feed India's hungry millions; that he quoted a passage from John Lewis's book "Quiet Crisis in India"; that the begging for food would result in the U.S. owning one in every three Indian rupees in the next 15 years and that in consequence, India's freedom would once again be in danger and that he appealed to the people not to judge candidates by the place of their birth but by their action, programme and policy. He deposed that the following part of his speech in *Blitz* (Ex. X-56) was not correct: He exposed respondent No. 2's key to victory based on division of people by playing on their caste and religious affiliation; that he accused respondent No. 2 of manoeuvring the past two elections in his own favour by dividing the people and stressing their caste and religious differences; that he accused respondent No. 2 of backing Shiv Sena and asked, what sort of a Maharashtrian is he? and that if ever the opposition and particularly the SSP came into power, they would dig out all the hoarded wealth accumulated by Patil in his own and his relatives' names. He added that a certain part of the report of his speech in *Blitz* appeared to be a purely imaginary account.

Respondent No. 1 was asked certain questions about ascertaining information from the other persons of what he said at this meeting. He believed that the five opposition candidates were all men of integrity and character and that he was fairly on friendly terms with each one of them, but he did not ask any other candidate about what he said at the meeting. The reason that he gave for not asking was that it was not necessary. Similarly, he did not make any enquiry from Mr. Rajani Patel who presided over this meeting or from any other person who sat on the stage at that meeting. He however, with a view to refresh his memory contacted the members of the SSP in order to ask them what they remembered of his speech, but he was not going to examine them as his witnesses as they are likely to be labelled as partisan witnesses. He was asked certain questions as regards Praful Baxi whom he intended to examine as a witness to establish what he said at this meeting. He did not try to contact any newspaper reporters who were present at this meeting. He did not ask Atre how the report in *Maratha* (Ex. X-23) appeared nor did he try to find out the correspondent who brought those news. He said that *Maratha* tried to tell many of the spurious stories in which there is no substance.

Respondent No. 1 was also asked questions as regards the reports that appeared in the Leftist papers *Link* (Ex. X-82) and *Patriot* (Ex. X-78). He said that the report in *Link*—that it was not entirely in fun that George Fernandes said recently that he was willing to accept the claim of the Congress that even God could not defeat respondent No. 2 God said Fernandes, was a clean fighter. That was Fernandes' way of acknowledging that his adversary has many trumps up his sleeve was not correct. He said he did not say any such thing. As regards

the report in *Patriot* (Ex. X-78), he said that the following portion of the report of his speech was not correct in all the previous elections, respondent No. 1 said, respondent No. 2 had managed to win by getting one minority set against other. How this game would be foiled, for the people were united as never before. Respondent No. 2's supporters claim that even God could not defeat their boss. He agreed. God was a clean fighter and would not take to switching the ballot boxes. Bombay's voters would reject the chauvinistic line of the Shiv Sena and its wire-pullers. He said that he did not make any of the above statements in the course of his speech. He deposed that he did not remember whether he made the following statement in his speech: Twenty years of progress in the Congress rule was such that even Jayprakash Narain came rushing from Bihar asking for donations for the famine hit people. Mr. Narain said that if he had Rs. 2000, he could keep at least 500 Bihari children alive for one month. The rest of the report of his speech in *Patriot* (Ex. X-78), he admitted, was correct.

Besides giving his own testimony, respondent No. 1 has examined three witnesses who, according to him, were present at this meeting. They are (1) Dinkar Waman Ranadive (Ex. 199), a reporter of *Maharashtra Times* who covered this meeting on behalf of that newspaper, (2) Praful Baxi (Ex. 202), a Senior Branch Manager of the LIC, who deposed that he attended this meeting with a view to hear Mr. H. R. Gokhale as he was curious to see a change from a Judge to a politician, and (3) D. S. Pradhan (Ex. 205), a member of the Bharatiya Jan Sangh, who was a candidate for an Assembly seat from Mahim constituency at the election.

Dinkar Waman Ranadive has proved the report in *Maharashtra Times* (Ex. 201) as a correct report of the speech made by respondent No. 1 at this meeting. He said that he dictated this report to the Sub Editor of the newspaper on telephone from a restaurant in Shivaji Park as the meeting went on till late hours that night. When his attention was drawn to the report of the news item in *Maratha* (Ex. X-23), he said that respondent No. 1 in his speech did not say: "It is true that even God cannot defeat Patil because God cannot exchange ballot boxes. He (God) is honest unlike Patil. Here lies the importance of this battle." He did not remember whether respondent No. 1 said that people would get a reply to their question of food, clothing, education and medical facilities in this contest. Respondent No. 1 did not say in his speech: "Patil can be defeated from South Bombay will be proved on 21st February. Patil has a technique of winning elections and that technique is to divide the people according to linguistic groups." Respondent No. 1 did not say that, in the election of 1957, respondent No. 2 created barriers between the Marathis and Gujaratis and got elected on non-Marathi votes; that in 1962 respondent No. 2 adopted the same thing, but having realised that he would not be able to avail himself of the same technique in 1967, he raised a question: What is the place of a Marathi man in Bombay? He has raised a cry to that effect and he is now adopting the technique of winning election by depending upon Marathi votes. But this time this technique will not be successful. Respondent No. 1 did say that the work of breaking the walls raised by the BPCC in the year 1957 would now be done by the Sampoorana Maharashtra Samiti, but he said this in the context of the Congress creating barriers between communities and communities.

He has cross-examined at length on the basis of the reports published in *Blitz* (Ex. X-56) and in *Patriot* (Ex. X-78). As regards the report in *Blitz*, he said that respondent No. 1 did not say in his speech that respondent No. 2's key to victory is based on division of the peoples unity by playing on their caste and religious affiliations; that he was standing against respondent No. 2 to explode the myth that he could not be defeated in Bombay; that not even God could win against respondent No. 2. He added that respondent No. 1 said this in different words and the report in *Blitz* is not an accurate report. He was, however, not asked in cross-examination what respondent No. 1 said in different words. He said that respondent No. 1 did say that some people say that even God cannot defeat respondent No. 2, that God was not in the contest, but voters could defeat respondent No. 2. He was asked questions as to whether he would regard the report in *Maratha* (Ex. X-23) about God and ballot boxes as personal attack on respondent No. 2. He said that he would regard the statement that God does not win against respondent No. 2 because God is honest and respondent No. 2 is not, as a personal attack on respondent No. 2. He added he said something like that in a different way. But he was not asked how and in what manner something like that was said by respondent No. 1. Respondent No. 1, according to Ranadive, also referred to ballot boxes in his speech. He said that he did not remember whether respondent No. 1 in his speech used the words to the effect that God is a clean fighter, but immediately thereafter he corrected himself and said that he did not think that he used any words having a similar connotation or meaning.

He said that he did not think that respondent No. 1 in his speech stated that respondent No. 2's supporters claim that even God would not defeat their boss, that respondent No. 1 agreed with that or said that God was a clean fighter and would not take to switching ballot boxes. In his speech respondent No. 1 did refer to God as well as ballot boxes, but he did not refer to switching of the ballot boxes. Even though at more than one place during his cross-examination Ranadive referred to reference to God and ballot boxes by respondent No. 1 in his speech, no questions were put to him as to how they were referred to. Ultimately in answer to a question by the Court, he said that respondent No. 1 referred to God and ballot boxes by making the following speech: "Congress workers said that God cannot defeat Patil. God is not in the election. I also cannot defeat. But voters can defeat Mr. Patil and when the ballot boxes will be opened, you will see that Patil has been defeated." In his further cross-examination he said that these sentences were uttered by respondent No. 1 in Hindustani and he reproduced the actual words which, according to him, were used by respondent No. 1 to convey the above idea.

Praful Baxi (Ex. 202) has given evidence of what he remembered of the speech of respondent No. 1 at this meeting. According to him, respondent No. 1 explained at this meeting to the public the reasons why he was contesting the election from Bombay South Parliamentary constituency and against respondent No. 2. Respondent No. 1 dealt at length on the food problem facing the country and the performance of respondent No. 2 when he was the Food Minister. He said that under the Food Ministership of respondent No. 2, India became more and more indebted to U.S.A. for food import and PL 480; that, in his opinion, dependence on foreign power for food makes us suicide; that respondent No. 2 should have toured the country and should have launched the movement for self-sufficiency in food; that the country was living more on slogans than on actions; that he cited the example of Chief Minister of Maharashtra Mr. Naik declaring that the State of Maharashtra would be self-sufficient in two years; that in a humorous tone he said that he was waiting for two years to pass, so that with a long rope, he would go to "Varsha" with all; that he would like the people to join him then; that they need not show mercy to Mrs. Vatsala Naik and would offer the long rope to Mr. Naik to hang himself. Respondent No. 1 also said that propaganda was carried against him that he was not a Maharashtrian; that he did not understand what place of birth had to do with whether he was a Maharashtrian or not; that, has anybody a choice in this matter? that if he had a choice, he would have preferred to be born in Satara and probably, respondent No. 2 would have preferred to be born in Washington from where food-grains were imported; that Congressmen told his workers that even God could not defeat respondent No. 2; that it is true that God could not defeat respondent No. 2, that it is also true that respondent No. 1 also could not defeat respondent No. 2, but that he was confident that voters of South Bombay could and that on 22nd February when ballot boxes would be opened, respondent No. 2 would be declared defeated. This is all that he remembered of the speech of respondent No. 1 at this meeting. He said that respondent No. 1 at this meeting did not say: "It is true that even God cannot defeat Patil because God cannot exchange ballot boxes. He is honest unlike Patil." Respondent No. 1 said that the fight was not against respondent No. 2 individually, but they were fighting on policies of food, shelter, clothing and employment. Respondent No. 1 did not say at this meeting that his election agents would be more careful to see that respondent No. 2 would not get away with his tricks of changing ballot boxes. In his cross-examination after drawing his attention to the appeal (Ex. 56), he was asked whether in the course of his speech respondent No. 1 developed the theme contained in this appeal, viz., "I believe that S. K. Patil is beatable and I am sure that you, the voters from South Bombay, will do it. In fact I have always considered it an insult to the intelligence and integrity of South Bombay voters when people mentioned that Patil is an unscrupulous politician and has his ways and means of winning elections." Praful Baxi said that respondent No. 1 developed the various points which he mentioned in his evidence-in-chief and many others which he (Baxi) might have missed. In his speech respondent No. 1 explained to the public the reason why he was contesting the election from Bombay South Parliamentary constituency against respondent No. 2. In his speech he made some reference about Shiv Sena and condemned it, but Baxi was unable to remember what exactly respondent No. 1 said at this meeting about Shiv Sena. In his speech respondent No. 1 stated that propaganda that he was not a Maharashtrian should not be carried on. He did not think that there was any reference to the past elections and to the success of respondent No. 2 at those elections. Baxi further said that there was a passing reference by respondent No. 1 in his speech to railway accidents, but he did not remember what he said in that connection. Baxi did not think that respondent No. 1 in his speech said that the press and money were against him, nor did he think that respondent No. 1 in his speech

said that the Congressmen and the Congressmen were corrupt. According to Baxi, some reference was made to a statement like, if his party came to power, it would unearth the ill-gotten wealth acquired by Ministers and their relatives, but that would be done by holding an enquiry. According to Baxi, respondent No. 1 did not make any reference to Bombay city's water supply, housing and other problems. Nor did he think that respondent No. 1 said in his speech that he could not defeat respondent No. 2 because he had not the means, Respondent No. 1 did not develop the point by saying that the press and the money were against him. According to him, reference to God and ballot boxes was made in humour.

The last witness who has given evidence about this speech of respondent No. 1 is Pradhan (Ex. 105). According to him, he went to this meeting after attending an election meeting in his own constituency. When he went to the meeting, Gokhale was addressing the meeting. According to Pradhan, respondent No. 1 in his speech criticised the misrule of Congress for the last 20 years. He criticised the agricultural development in the country. He referred to PL 480. He said that the people were propagating that he was a non-Maharashtrian. In answer he said that what contribution he has made to the cause of Samyukta Maharashtra. These according to Pradhan were the main points in the speech of respondent No. 1. When his attention was drawn to the report in Maratha (Ex. X-23) to the effect "It is true that even God cannot defeat Patil because God cannot exchange ballot boxes. He (God) is honest unlike Patil. Here lies the importance of this battle." He replied that this is not a correct report of the speech of respondent No. 1. In his speech respondent No. 1 referred to God and ballot boxes. According to Pradhan, about ballot boxes respondent No. 1 said that when ballot boxes would be opened, it would be seen that Patil is defeated. God, according to Pradhan, was referred to by respondent No. 1 when he said that he could not defeat respondent No. 2, even God could not defeat respondent No. 2. In his cross-examination, Pradhan admitted that the issue of Maratha (Ex. X-23) was shown to him by the lawyers before. When it was shown to him, he told the lawyers that the particular thing mentioned in that report was not said by respondent No. 1. He also pointed out one thing more to the lawyers. The report in Ex. X-23 that Patil has a technique of winning elections and this technique is to divide on the basis of language; in 1957 respondent No. 2 got elected on the strength of non-Marathi votes by creating barriers between Marathi against Gujarati, was not correct. According to Pradhan, respondent No. 1 in his speech said that the Congress did these things which are mentioned in the above passage and not respondent No. 2. He also said further in his cross-examination that respondent No. 1 in his speech said that it is true that even God could not defeat respondent No. 2, but these words were uttered in a different context. Respondent No. 1 also said that it is true that he could not defeat him, but he did not say why he could not defeat respondent No. 2. Respondent No. 1 in the course of his speech said that the press and money were against him, that he was sure that the voters of South Bombay could defeat respondent No. 2. In his cross-examination he pointed out the sequence in which different things were stated by respondent No. 1 in the course of his speech. He did not remember whether respondent No. 1 discussed Bombay's water supply problem. He did not discuss housing and unemployment problem. He referred to railway accidents when he was referring to misrule of Congress.

This is substantially the entire oral testimony of the various witnesses in relation to what respondent No. 1 said during the course of his speech at Shivaji Park.

18th January, 1968:

The evidence of these witnesses examined on behalf of the petitioner except that of Dr. S. Dharmarajan shows that in his speech respondent No. 1 referred to God and ballot boxes in such a way as to cast aspersion on the personal character of respondent No. 2. Each one of them has deposed to this part of the speech in somewhat different words. But the general effect of what respondent No. 1 said, according to them, is the same. According to them respondent No. 1 wanted to convey that people say that even God cannot defeat respondent No. 2 because God cannot exchange ballot boxes. He is honest unlike respondent No. 2. The version of respondent No. 1 and that of the three witnesses examined on his behalf is different. They do say that respondent No. 1 in his speech referred to God and ballot boxes but not in the manner suggested by the witnesses examined on behalf of the petitioner. The effect of their evidence is that respondent No. 1 in the course of his speech said that exasperated Congress workers were telling these workers that leave alone respondent No. 1, even God cannot defeat respondent No. 2; that God

was not fighting the election, that voters of South Bombay could defeat respondent No. 2, that when the ballot boxes would be opened on February 22, the world will see that respondent No. 2 was defeated. Each one of these witnesses has denied that respondent No. 1 in his speech said that even God could not defeat respondent No. 2 because God could not exchange ballot boxes, that God was honest unlike respondent No. 2. These are the rival versions. The question arises, has the petitioner discharged the onus of establishing this charge of corrupt practice beyond reasonable doubt.

When this petition was presented to this Court on April 7, 1967, there was not even an averment in the petition in relation to this speech made by respondent No. 1 at Shivaji Park meeting. Only vague allegations without any particulars whatsoever, were made in para 2J of the Petition. The time, the place and the contents of the speech or speeches alleged to be made by respondent No. 1 were not pleaded. Even when reference was made to the issues of Maratha, only the dates of the issues of Maratha, without referring to the particular extract that were intended to be relied upon, were referred to. It was only after the order was passed on July 3, 1967 that the petitioner for the first time introduced various items as Ex. E to the petition. This exhibit consisted of the various extracts from Maratha. One of the extracts in Ex. E is in relation to the report of a speech alleged to be made by respondent No. 1 at Shivaji Park meeting. That extract is from the issue of Maratha, dated February 1, 1967 and reads : "Patil has a technique of winning election. He divides the linguistic groups—it is true that even God cannot defeat Patil because God cannot exchange ballot boxes. He (God) is honest unlike Patil....." This extract was relied upon in Ex. E simply because such a news item appears to have been published in the issue of Maratha. At the time when Ex. E was introduced in the petition, the petitioner has made a somewhat unusual type of declaration in the petition. At the time of this amendment, he stated on solemn affirmation that what is stated above (i.e. in Ex. E to the petition) is true translation of the reports appearing in the newspapers referred to above. The petitioner himself was not personally present at this meeting at Shivaji Park. Even when the extracts were introduced in Ex. E to the Petition, he had not received any information about the speech of respondent No. 1 at Shivaji Park from any person. He appears to be in search of witnesses who were able or prepared to depose about this speech of respondent No. 1. In respect of the speeches made at some of the election meetings, the petitioner got a letter of request issued to various officers including the Commissioner of Police, Greater Bombay. By the order dated August 10, 1967, the Prothonotary and Senior Master of this Court was directed to issue a letter of request to the Commissioner of Police requiring him to depute Officer and/ or reporters to produce the reports or copy or copies of reports of the various meetings covered by them and to give evidence thereof. A list of such meetings and reports is given in Annexure II to this order. This annexure shows that the petitioner required the Commissioner of Police to produce such reports in respect of about 11 meetings and to have the reporters who made such reports, examined. For reasons best known to the petitioner, he did not call for the report of the speeches made by various speakers including respondent No. 1 at the meeting held at Shivaji Park on January 31, 1967. Even while he was in the witness box he was asked a question whether he was going to get a letter of request issued to the Commissioner of Police for producing the report if any, of this public meeting and he replied that: "I have not got a letter of request issued to the Commissioner of Police for producing the report, if any, of that public meeting held on 31st January, 1967." In respect of some other speeches, namely, the speech of respondent No. 1 at Sabu Siddiq Chawl and the speech of Mr. Madhu Limaye at Chowpatty, the petitioner not only got the reports made by the Police Reporters produced on record, but he also examined the particular reporter who had made and submitted such report. However, in respect of this meeting at Shivaji Park, the petitioner has not chosen to examine the police reporter, who covered that meeting and also has not got his report produced on record. A report made by a police reporter is a contemporaneous record of the speech and in the absence of any special reason it will be a very useful piece of evidence of the contents of the speech made at the meeting. Instead of getting such reports produced or examining the police reporter, the petitioner has chosen to rely upon merely the oral testimony of witnesses, whose presence at this meeting, he came to know from time to time after this election petition was filed, and to trace or to get the evidence of some of whom, efforts were made by some person other than the petitioner.

When this petition was filed, the petitioner was not aware of the name of a single individual who was present at this meeting. It appears from his evidence that he was in search of witnesses who could be able to depose about the speeches at this meeting. In his evidence, he clearly admitted that he learnt about this meeting from the report published in the Maratha and Blitz and from Yeshwant Mahadik. He has deposed how he contacted Yeshwant Mahadik. He said that he had talked to his friend Jayavant Rane to bring persons who attended this meeting at Shivaji Park. Pursuant to this talk Jayavant Rane informed him that Yeshwant Mahadik was present at this meeting. On or about August 8, 1967—a little more than a fortnight before the bearing of this petition started—he for the first time talked to Yeshwant Mahadik about what transpired at this meeting when Jayavant Rane brought him to his place. He also deposed to the talk that he had with Mahadik on that occasion. He said that Mahadik remembered that he had attended this meeting at Shivaji Park and that respondent No. 1 spoke at this meeting. He has also deposed what Mahadik remembered on that occasion of the speech of respondent No. 1. Mahadik told him that respondent No. 1 in his speech stated that he was fighting the election against respondent No. 2; that respondent No. 2 was winning elections by changing ballot boxes and that he would not allow respondent No. 2 to change the ballot boxes on this occasion. This is all that the Petitioner remembered of the talk that he had with Mahadik. On the day when he gave this evidence—on September, 8, 1967—he in his evidence stated that he was not leading evidence of any other witnesses to establish what happened at this meeting at Shivaji Park. On that day he also stated that he had seen the report of this speech in the issue of Times of India and Blitz and he found that it was not reported therein that respondent No. 1 in the course of his speech in this meeting stated that respondent No. 2 was changing the ballot boxes in the election. He had till then made no efforts to find out whether the report of such an allegation against respondent No. 2 about changing the ballot boxes was published in any other newspaper and he said that he did not find such an allegation reported in any other newspaper. Thus when the trial began, it was only in the testimony of Yeshwant Mahadik that the petitioner intended to bring home the charge of this corrupt practice to respondent No. 1, and he was not going to lead any other evidence to substantiate this charge.

Yeshwant Mahadik undoubtedly in his evidence refers to respondent No. 1 having stated that respondent No. 2 changes the ballot boxes for getting himself elected and that on this occasion he would see that the ballot boxes would not be changed and that he would destroy that technique. But the evidence of this witness Yeshwant Mahadik suffers from a number of serious infirmities. This meeting was held at Shivaji Park at late hours at night and Yeshwant Mahadik is an unnatural witness to attend such a meeting. Yeshwant Mahadik is employed as a production supervisor in Swastik Engineering Works which has its workshop at C. P. Tank at Bombay. He stays in the workshop and probably has no other independent accommodation for his residence. However, he explained his presence at this meeting by saying that on that day he had been to see his brother, who resides at Narayana Bhavan, Shivaji Park and while he was returning from his residence to go to Dadar Railway Station, he saw a number of persons going in the direction of Shivaji Park and was thereby induced to attend this meeting. Thus his attendance at such a meeting is rather unusual. His further evidence shows that he is an interested witness so far as the petitioner is concerned. During the 1967 election, he was working for a Congress Assembly Candidate in a Constituency which formed part of respondent No. 1's Parliamentary Constituency. While so canvassing, he did the work of every other Congress candidate at the election. In his evidence he has admitted that during the elections held in the years 1957, 1962 and 1967 he worked for respondent No. 2 and the other Congress candidates. He happened to be present in the High Court when even inspection of the documents disclosed by the petitioner was given to the Advocate of the Respondent No. 1. Initially he denied having helped the petitioner in this proceedings by doing any odd job but thereafter he admitted that he was present in the Appellate Side Bar Association Room when inspection of the documents disclosed by the petitioner was taken by Respondent No. 1 and that he was helping the petitioner when he was giving such inspection of documents. Lastly his evidence shows that he does not remember anything more of the speech of respondent No. 1 except about the changing of ballot boxes. He does not say a word from the speech of respondent No. 1 that is reported in the issues of Times of India

Indian Express or Maharashtra Times. There are thus a number of infirmities in the testimony of this witness Yeshwant Mahadik and it will be unsafe to place any reliance upon his testimony to bring home this charge to respondent No. 1.

Though, initially it was the intention of the petitioner to establish this charge of corrupt practice on the evidence of Yeshwant Mahadik, it must have been felt by him that his testimony was quite insufficient to establish such a charge of corrupt practice. He, therefore, seems to have made efforts to find out other witnesses who are able or prepared to give evidence. As a result of these efforts, Ramkumar, the reporter of the Indian Express who covered this meeting on behalf of his newspaper, was examined. Ramkumar ordinarily is an independent witness and his presence at this meeting cannot be disputed. It is as a result of the report furnished by him that the news item (Ex. 166) was published in the issue of the Indian Express dated February 1, 1967. However, in Ex. 166 there is no reference to the controversial part of the speech about which he deposed in the witness box. His evidence is that he did not incorporate this part of the speech in the report as a result of the discussion that he had that very night with E. V. Rao (Ex. 160), the Chief Reporter of the Indian Express. On this crucial point, his evidence is not corroborated by that of B. V. Rao, Ramkumar in his evidence has stated that he left this meeting at about 11.30 P.M. after Krishna Menon, the last speaker at this meeting addressed the meeting for about 5 minutes. From the meeting he went to the office of the Indian Express. When he reached the office, the Chief Reporter B. V. Rao was already there. He had discussions with him about the controversial point which he wanted to incorporate in his report. The controversial point was about the changing of ballot boxes by respondent No. 2. This was the only controversial point so far as the speech of respondent No. 1 was concerned. In view of this discussion on the controversial point with the Chief Reporter, he did not incorporate it in the report that he prepared for being published. He himself then typed out the report of the speeches and showed it to the Chief Reporter. In his cross-examination, his evidence is that apart from having the discussion with the Chief Reporter on the controversial points on the early morning of February 1, he had discussed with him on these points for a couple of days because these points were not incorporated in the report and he wanted to know why they were not incorporated. This is the discussion according to Ramkumar, that he had with the Chief Reporter, both on 1st and 2nd of February. He said that even on the midnight of January 31, the Chief Reporter had already told him the reasons for not incorporating the objectionable points in the report till he had discussion with him on 1st and 2nd of February. Such discussion, he explained by saying that on the earlier occasion, the Chief Reporter had not given him the details. On 1st and 2nd of February he had discussion with the Chief Reporter only on the controversial points and on nothing else. This testimony of Ramkumar is, however, not corroborated by that of E. V. Rao.

Rao is examined as a witness before Ramkumar stepped into the witness box and he does not refer to any discussion with Ramkumar on any controversial point in the speech of respondent No. 1 or any other speaker either on the midnight of 31st January or 1st or 2nd February. Rao has deposed to the preparation of the report by Ramkumar for publication in the Indian Express after he returned from the meeting. He said that on the night of 31st January 1967 he was in the office upto about 2 A.M. of 1st February, as this was an important meeting. Ramkumar returned to the Office after covering the meeting at about 12.30 A.M. or 1 A.M. as the meeting lasted till midnight. On that occasion, he (Ramkumar) did not submit any notes to him of what happened at the meeting. He had prepared a note of what he heard at the meeting, but Rao did not want to see the notes at that time. He did not read the notes prepared by Ramkumar. He asked Ramkumar to prepare a report from the note and the report was prepared and typed by Ramkumar in his presence. At that time, he was busy doing other work. The report after it was prepared was shown to him and he went through it. He thereafter sent it for publication for Indian Express edition at Bombay, Delhi and Madras. Thus, neither Rao had been asked about the discussion on the controversial point nor has he deposed to it in the course of his evidence. Even though Ramkumar alleges that he had such discussion with him more than once—that is on the midnight of 31st January and on 1st and 2nd of February.

Thereafter an application to re-call B. V. Rao for further examination-in-chief in connection with the discussion that he had with Ramkumar, was made. In the alternative, an application on behalf of the petitioner was made that Rao should be tendered for further cross-examination. That application was opposed by the Counsel for respondent No. 1 and I rejected this application. It is significant to notice that this application for re-calling Rao was not made on the evening of September 28, 1967 when Ramkumar deposed to in his evidence-in-chief about this discussion on the controversial point nor even on September 29, 1967 immediately after the evidence of Ramkumar was over. The evidence of Ramkumar was over before the recess on September 29, 1967 but for reasons best known, this application was made at 4.45 P.M. on September 29, when the Court was to rise for the day and the week-end of three days was to intervene thereafter.

An infirmity is noticed in the evidence of Ramkumar also having regard to his evidence of the statement made by respondent No. 1 in the course of his speech. At more than one place in his evidence he said that he did not remember the exact words spoken by respondent No. 1 or the sequence in which the various points were made by him in his speech. But so far as the controversial part of the speech is concerned, he has in substance reproduced almost the exact words used in paragraph 2J of the petition. He admits that he had no occasion to remember or reproduce this speech of respondent No. 1 after February 2. Still his memory is vivid on the controversial part of the speech. Lastly Ramkumar was cited as a witness only in the 4th and the last list of witnesses that was filed in this Court on September 28, 1967—the day on which his evidence started. Rule 13 of the Election Rules framed by the High Court requires that within 7 days of the settlement of the issues, the parties shall file a list of witnesses and pay the process fees and travelling allowances, the dict allowances and the local conveyance allowance for those of them who are required to be summoned. The issues in this petition were settled on or about July 3, 1967. The 1st list of witnesses, in accordance with this rule 13 was filed in this Court on July 15, 1967 and it contained the names of about 22 witnesses. Three days thereafter on July 18, 1967 a second list of witnesses was filed on behalf of the Petitioner and it contained the names of about 72 witnesses. A third list of witnesses was filed on behalf of the petitioner on August 22, 1967 and it mentioned the names of about 8 witnesses. The final list was filed on September 28, 1967 containing the names of 8 witnesses and the name of this witness was mentioned only in this last list. In his cross-examination, the petitioner clearly stated that he was examining no other witness apart from Mahadik to prove the contents of the speech of respondent No. 1 at this meeting but no evidence is given showing how this witness Ramkumar came to be contacted, and how the petitioner came to know that he had covered this meeting as the Reporter of Indian Express. Ramkumar in this cross-examination has stated that about four days before he gave evidence, one Samant—presumably the petitioner—came to him in his office and told him that the Chief Reporter must have talked to him about the evidence that he had to give. At that time Samant alone came to his office and was not accompanied by either Mr. Patkar, the son-in-law of respondent No. 2 or anybody else. Then he went to the Chambers of Mr. Jethmalani Counsel for the Petitioner and met Mr. Patkar there. A little earlier in his evidence he said that about five days ago, that is round about September, 3, 1967 he had talked with Rao but he was not then told that he was required to give evidence. He was served with a summons to give evidence a day prior to his evidence was recorded in this Court. In view of these infirmities in the testimony of Ramkumar, it is unsafe to rely upon his testimony for holding this charge of corrupt practice as proved.

S. Dharamrajan, the Reporter of the Times of India, who covered this meeting on behalf of this newspaper does not improve the case of the Petitioner any further. His evidence shows that he did not remember anything of the speech that was made at this meeting and his evidence neither assists the petitioner nor establishes the case of respondent No. 1.

Then there is the evidence of group of four witnesses—Tanksale, Bhide, Khambete and Bendre—who are residents of Dadar. On the controversial part of the speech of respondent No. 1, namely, about God and Ballot Boxes, each one of them substantially tries to reproduce the effect of the words almost exactly as reported in Maratha (Ex. X-23). Tanksale said in the course of his speech respondent No. 1 said that people thought that respondent No. 2

could not be defeated; that was true; that he also thought so because respondent No. 2 had a magic of exchanging the ballot boxes and changing votes which nobody else has; even if God himself stood against respondent No. 2 he could not defeat him because God was honest. According to Bhide, respondent No. 1 in his speech said that as respondent No. 2 was a Goonda and supposed to be an election expert, it was very difficult to defeat him; that even God could not defeat respondent No. 2 because God was honest and respondent No. 2 was not so; that God would not exchange ballot boxes as respondent No. 2 does; according to Khambete, respondent No. 1 in the course of his speech said that it was very difficult to defeat respondent No. 2, that if God contested against him, he (God) would be defeated at the election, that he was an expert in exchanging ballot boxes. Lastly, according to Bendre, respondent No. 1 said even God could not defeat respondent No. 2 because God could not change ballot boxes, that God was honest, that he (God) was not like respondent No. 2. It is a strange coincidence that none of these witnesses referred to in their evidence-in-chief to a majority of the points of the speech of respondent No. 1, which are referred to in the Press reports of his speech in newspapers like Indian Express, Times of India and Maharashtra Times.

Reference may, for example, be had to the report in the Indian Express (Ex. 166). This report shows that in his speech respondent No. 1 said that respondent No. 2 as the ring leader of the circus of BPCC was creating rift among the people on language, caste and religious basis, that respondent No. 2 had himself admitted at a meeting at Dana Bunder that he had once suggested to President Kennedy that America should produce more rice to meet India's demand, that respondent No. 2 would endanger the country's freedom, that even now 1/5th of the country's money is being controlled by America, that after the opposition parties form a Government at the Centre, its first programme would be to empty the ill-gotten wealth amassed by Congressmen and capitalist who had been sheltering under the ruling party. Tanksale in his evidence-in-chief *inter alia* dispose to a reference by respondent No. 1 to respondent No. 2 as a leader of the BPCC which is a stronghold of capitalist but in his evidence-in-chief, no mention has been made of the other points reported in the Indian Express of the speech of respondent No. 1. The same is the case of Bhide, Khambete and Bendre. About Bendre, it may be said that he *inter alia* stated in his speech respondent No. 1 said that respondent No. 2 and his Government have mortgaged our nation to America but this is substantially a reproduction of the statement which is found in the report in Maratha (Ex. X-23). It is rather surprising that each one of them in their evidence-in-chief has omitted to refer to most of the points proved to have been made by respondent No. 1 in the course of his speech.

In somewhat dramatic manner Tanksale has tried to enumerate the various reasons, which according to him, assisted him in remembering the contents of the speech of respondent No. 1 at this meeting. First he says that he had spoken about the speech to other friends Bhide, Bendre and Khambete while they were returning from the meeting to their respective residences. He then said that he had occasion to talk about this meeting with his friends Natha Dabir at Dadar, but he did not remember how many days after the meeting he had a discussion with Dabir. Apart from this, he had no other occasion to talk to anybody about the speeches at this meeting before he spoke to Mr. Shamrao Samant on the night of September 25, 1967 just a few days before his evidence was taken. He gave a special reason for remembering this speech that that he was admiring respondent No. 1 and that was actually why he attended this meeting. He somewhat wanted to strengthen this special reason by saying that about 1½ years ago one of his friends told him that he looked like respondent No. 1; he says that he remembered the speech because though respondent No. 1 was accused of being a non-Maharashtrian he was fighting for the cause of Maharashtra and Tanksale wanted to hear from respondent No. 1 what he had to say. Two other reasons for remembering his speech given by Tanksale are that the speech for forceful and he thought that it was suicidal for respondent No. 1 to contest the election against respondent No. 2 from this constituency. Bhide also in the course of his evidence tried to give some reasons why he remembered the speech. He has referred to the discussion that he had with others about the speech and he also says that he was impressed by the manner and method of respondent No. 1 in addressing a public meeting. If this is correct, it is difficult to understand how all of them substantially omitted the same points which are referred to in proved reports of the speech in the newspapers. When Khambete was asked about the various

questions referred to by respondent No. 1 in his speech at this meeting, he frankly admitted that he did not remember whether respondent No. 1 said anything about the Chief Minister Mr. Naik, he did not remember whether he made any reference to the City of Washington and that he did not remember whether he mentioned anything about Jaya Prakash Narayan etc.

The evidence of these witnesses as regards the language in which respondent No. 1 addressed this meeting cast a considerable infirmity in their testimony. To illustrate this point, it would suffice if reference can be had to the pieces of evidence of the various witnesses as regards the language in which respondent No. 1 and Mr. H. R. Gokhale, two of the speakers, addressed this meeting. In his evidence-in-chief, respondent No. 1 said that at this meeting he spoke in Marathi, Hindi and a little bit in English because Mr. Krishna Menon was on the platform and there was sizable audience which could not have understood Marathi and Hindi. According to respondent No. 1, Mr. H. R. Gokhale spoke at this meeting in Marathi and Gujarati. This evidence of respondent No. 1 is not at all challenged in his cross-examination. His testimony of the language in which he and Mr. Gokhale spoke is corroborated by the evidence of other witnesses who are examined on his behalf. Randive says that in his speech respondent No. 1 spoke in three languages—Marathi, Hindustani and English. To the same effect is the evidence of Prafulla Bakshi. He says that the speech of respondent No. 1 was sometimes in Marathi, sometimes in Hindi and sometimes in English. Randive and Bakshi are not asked any questions as regards the language in which Mr. Gokhale spoke at this meeting. Pradhan says that he went to this meeting while Mr. Gokhale was addressing this meeting in Gujarati and as regards respondent No. 1, he said part of his speech was in Marathi and part in Hindi. He does not refer to respondent No. 1 having spoken in English language. However, the four witnesses from Dadar, viz., Tanksale, Khambete, Bhide and Bendre say that respondent No. 1 addressed the meeting only in Marathi. Tanksale is not asked any question about the language in which Mr. Gokhale addressed this meeting. But the other three witnesses say that Mr. Gokhale addressed this meeting in Marathi and he did not deliver any part of his speech in Gujarati. Ramkumar, so far as he recollected, said that respondent No. 1 spoke at this meeting in Marathi and about Mr. Gokhale he clearly said that he spoke at this meeting in Marathi only. About respondent No. 1 he said that he would not be surprised to know that at this meeting he spoke in three language viz., Marathi, Hindi and English. As regards the language in which respondent No. 1 addressed this meeting, I accept his testimony because his evidence-in-chief in that behalf is not at all challenged in cross-examination and hold that as stated by him, he addressed this meeting sometimes in Marathi, sometimes in Hindi and sometimes in English.

There is a minor discrepancy in the testimony of these witnesses on question whether respondent No. 1 came late at this meeting and about the order in which the various speakers addressed this meeting. There is also slight difference on the question whether they were sitting or standing at this meeting. Bendre has said that at this meeting they were sitting on the right side of the stage at a distance of about 100 yards therefrom while Khambete said that they were standing on the left hand side of the stage about 60 yards away. The other two witnesses are not asked any questions on this aspect of the matter.

At the outset, in his cross-examination, Tanksale who is the first witness amongst this group of witnesses wanted to create an impression that it was by chance that he and the other three witnesses Bhide, Khambete and Bendre were served with the witness summons together near the Times of India Building on Wednesday, September 27, 1967. He said that the witness summons was served on him near the Times of India Building. He was at that time in the car of the petitioner. He and his three friends were standing near the Times of India Building on the footpath. The petitioner came there in the car. He asked them whether they had any objection if the witness summons were served there and he replied in the negative. They asked the petitioner for what purpose the summons was being served and the petitioner replied that he had come to know that they were present at the meeting and he asked them whether they were willing to come to Court and give evidence. These answers in cross-examination are given to create an impression that it was by chance that he and the other witnesses were served with the witness summonses and were required to give evidence. His searching cross-examination later on, however, shows that this was an unsuccessful attempt by him to mislead the Court and to create a wrong impression. His further cross-examination established that it was already pre-arranged to examine this group of witnesses before they were served and that they were served near the Times of

India Building, as a result of such pre-arrangement. It emerges from his further cross-examination that on Saturday, September 23, 1967, just six days before he was examined, he had been to the BPCC Office and on that occasion he met Mr. Maheshwar Thakur. First he said that he went to the BPCC Office for his own purpose and then he said that there was actually no purpose. He just went there as he often goes to the BPCC Office and meets Mr. Maheshwar Thakur. He knew him for the last about 1½ years. He also said that he had come to know about this Election Petition about three weeks ago. He has also given evidence about the talk that he had with Mr. Maheshwar Thakur this Saturday evening. Tanksale asked him how was the election petition going on and Mr. Maheshwar Thakur enquired: "Oh; you are from Dadar. Do you attend meetings?" Tanksale answered in the affirmative. Mr. Maheshwar Thakur asked him to go to Mr. Shamrao Samant, asked him whether he would be able to give evidence and whether he would be able to say what he had heard. Tanksale replied that he would not be able to say anything else but he would be able to say what he had heard. Tanksale ascertained about the particulars of the address of Mr. Shamrao Samant. Mr. Maheshwar Thakur enquired whether he should pick him up and Tanksale replied that he knew where Mr. Shamrao Samant was residing. After deposing to this talk, Tanksale added, on Saturday evening he asked Mr. Maheshwar Thakur about what meeting he was asking him. That evening he was asked by Mr. Maheshwar Thakur to go to Mr. Shamrao Samant's house on Sunday, September 24, 1967 at 11 A.M. Tanksale also said that he was taken on Sunday at 11 A.M. to Mr. Shamrao Samant's house by Mr. Maheshwar Thakur. Actually Mr. Maheshwar Thakur had asked him to go to Mr. Shamrao Samant's house on Sunday at 11 A.M., in fact he had not taken him there. He had asked him to go there. On Monday, September 25, 1967 in the morning, Tanksale and his three friends decided to go to Mr. Shamrao Samant's house that very night. Accordingly, they all went at night, held a discussion at Mr. Shamrao Samant's place for nearly an hour and half. It was then decided at this meeting that they all four should meet near the Times of India Building and it was as a result of this pre-arrangement that they were served by the petitioner together on September 27, 1967 in front of the Times of India Building. These circumstances show that the talk that he deposed to at the outset with the petitioner at the time of the service of the summons—the petitioner enquired of them whether they had any objection if they were served with the summons there, and he said in the negative; that they asked the petitioner for what purpose the summons was being served, the petitioner said that he had come to know that they were present at the meeting and asked them whether they were willing to come to Court and give evidence—is really and clearly an unsuccessful attempt to mislead the Court and creat a wrong impression.

It is not disputed that it was with the assistance of Tanksale that the names of the other witnesses were ascertained and ultimately they were examined as witnesses. The evidence of Tanksale also shows that he is fairly well acquainted with Mr. Maheshwar Thakur, who is the General Secretary of the BPCC and who was the election agent of respondent No. 2 at the election. He is also related to respondent No. 2, he being the nephew of respondent No. 2. Tanksale also said in his evidence that previously he approached Mr. Maheshwar Thakur on some occasions so that he might speak to respondent No. 2 who was then the Railway Minister for giving some facility for lunch hour to the employees of the Railway Administration. He was in the habit of visiting Mr. Maheshwar Thakur and in this manner, he admits having met him on or about four or five occasions. Tanksale is also the intimate friend of the other three witnesses, who expressed their willingness to give evidence at his request.

A serious infirmity in the testimony of these witnesses is introduced by reason of the fact that on the night of Monday, September 25, 1967—just a few days before their evidence was led—they all met together at the residence of Mr. Shamrao Samant, one of the Advocates of the Petitioner in this case for nearly 1½ hours in the presence of the petitioner. Reference may well be had to what had happened at this meeting on Monday night. Tanksale says that that night he with his friends were at the place of Mr. Shamrao Samant for about an hour and half. Mr. Shamrao Samant asked them whether they attended the public meeting held at Shivaji Park on January 31, 1967; there was a discussion between them and Mr. Shamrao about what happened at this meeting. He asked them what they remembered about this meeting. On inquiry by Mr. Shamrao Samant, something was said by Tanksale, something was said by Bhide, and something was said by two other witnesses. They were then all sitting together in the gallery. Tanksale said that at that time, he did not reproduce fully the speech of respondent No. 1 about which he gave evidence in Court. Mr. Shamrao Samant made notes of what each one of them

said. Surprisingly he then changes the story and says that no part of the speech of respondent No. 1 about which he gave evidence in chief was narrated by his friends to Mr. Shamrao Samant at the time when they went. He said that when he was informing Mr. Shamrao Samant about the speech of respondent No. 1, at the meeting, others were seen in affirmation thereof by saying "Yes." None of the friends of their own said anything about the speech of respondent No. 1 which he had not mentioned. He has also given evidence of what was discussed in relation to the speech of respondent No. 1 at this meeting. He said that he told Mr. Shamrao Samant that respondent No. 1 stated that respondent No. 2 was the Data of the BPCC, which was the stronghold of capitalist; that respondent No. 2 got himself elected by creating a rift amongst voters by language; now the voters were awake; that the people thought that respondent No. 2 changed ballot boxes, that he created manipulations of votes, that if God himself stood against respondent No. 2 he would not be able to defeat him and that that was true because God was honest but respondent No. 2 was not.

Bhide has also given evidence of what happened while they were at Mr. Shamrao Samant's place. He says that on enquiry by Mr. Shamrao Samant, they told him that they had been to the meeting, that they remembered what was said at the meeting, that they were willing to give evidence in the case; that while they were introduced to the petitioner, the petitioner enquired of them when they would be able to see him again and they replied that he could see them at 6 O'clock on Wednesday September 27, 1967 near the *Times of India* Building. As regards the talk in relation to respondent No. 1's speech, he said that he himself did not narrate what was said by the speakers at the meeting, but he said that what was said by Tanksale was correct, that Bendre and Khambete did not also say anything and they merely stated that what was stated by Tanksale was correct. Lest such testimony may affect his credibility, a little later in cross-examination he said that he could not say exactly what Tanksale told Mr. Shamrao Samant on September 25, 1967, that on that day, Tanksale narrated one or two points about respondent No. 1, namely, the point about God and respondent No. 2, that he also narrated about that point that he (respondent No. 1) being a non-Maharashtrian and respondent No. 2 being Maharashtrian, that he (Bhide) was not attentive at that time and Tanksale might have said something more on that occasion. He added that when important points were narrated by Tanksale, he was attentive but afterwards he was not attentive. About what happened at Mr. Shamrao Samant's place, Khambete says that Tanksale informed Mr. Shamrao what had happened at the meeting and he referred to that information in his evidence in chief. Mr. Shamrao Samant did not ask him or Bendre but he asked everything to Tanksale. They were silent because there was no reason to contradict whatever Tanksale said. Then he refers to the talk that took place in connection with the service of the summons and says that there was no other talk about the evidence that was to be given. Bendre also says that at Mr. Shamrao's place, Mr. Shamrao asked whether they attended the meeting, who spoke at the meeting and what respondent No. 1 stated about respondent No. 2 at the meeting. Tanksale gave the information to Mr. Shamrao Samant and they confirmed it. There was no occasion for him or for any of his friends to correct what Tanksale then said. He remembered only one sentence of what Tanksale told Mr. Shamrao Samant. Tanksale said that respondent No. 1 stated that God cannot defeat respondent No. 2 because God is honest, unlike respondent No. 2; He cannot change ballot boxes like respondent No. 2. Bendre said that that was what Tanksale told Mr. Shamrao on that occasion.

This evidence shows that there is detailed discussion on September 25, 1967—just a few days before they gave evidence—about the speech of respondent No. 1 for about 1½ hours at the place of Mr. Shamrao Samant. To a considerable extent, this discussion must have assisted these witnesses to depose about the controversial part of the speech of respondent No. 1. It may well be that it was because of this discussion some of these witnesses might have referred to this part of the speech of respondent No. 1 in their evidence. The names of all these witnesses are included in the last and the final list that was filed only on September 28, 1967 because when the earlier lists were filed in the case neither the petitioner nor anybody helping him in connection with this petition, knew whether the evidence of these witnesses will be available at the trial of this case. The infirmities above referred to create considerable difficulty in accepting the testimony of these witnesses on the controversial part of the speech of respondent No. 1.

In an election petition, the charges are of a quasi criminal nature. The onus of establishing a corrupt practice is undoubtedly on the person who sets it up and

the onus is not discharged on proof of mere preponderance of probability, as in the trial of a civil suit; the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous. On the evidence of these witnesses—Mahadik, Ramkumar, Tanksale, Bhide, Khambete and Bendre—it is difficult to hold that in the course of his speech at Shivaji Park on January 31, 1967 respondent No. 1 stated or insinuated that respondent No. 2 won elections by tampering with ballot boxes or substituting the same or that even God could not defeat defendant No. 2 because unlike respondent No. 2, God was not dishonest, or that respondent No. 2 was a man of low character or had stooped to commission of criminal offence with the object of winning elections. Their evidence is insufficient to bring home the charge of corrupt practice pleaded in paragraph 2J(i) of the Petition.

Respondent No. 1 is undoubtedly an interested witness and the Court will normally be shown to accept his mere testimony if there was no corroboration in the present case, the testimony of respondent No. 1 on the controversial part of the speech stands corroborated by the evidence of Randive, Prafulla Bakshi and Datta Pradhan. In fact, each one of these witnesses has stated that respondent No. 1 in his speech did not say that it was true that even God could not defeat respondent No. 2 because God could not exchange ballot boxes, that He (God) was honest, unlike respondent No. 2. In the course of his speech, according to these witnesses, the words "God" and "Ballot Boxes" were no doubt referred to but they were not referred to in the manner suggested on behalf of the petitioner. They have stated that exasperated Congress workers said that God could not defeat respondent No. 2, that God was not in the election, that voters of South Bombay can defeat respondent No. 2 and that when the ballot boxes would be opened, it would be seen that respondent No. 2 was defeated.

On behalf of the petitioner, evidence of these witnesses, namely, Randive, Bakshi and Pradhan was severely criticised and it was strenuously urged that the Court should be shown to accept their testimony. It will be necessary to consider the criticism made on behalf of the petitioner against the evidence of each one of these witnesses examined on behalf of respondent No. 1.

It was said that Randive was a partisan witness, in view of his relations with the Socialist Party. Reliance was placed upon his testimony wherein he was asked questions about his joining Socialist Party and coming into contact with the leaders of that party. He has admitted that as early as 1948 he had joined the Socialist Party; that when Praja Socialist Party was formed, he joined that Party in the year 1952, that he knew Dinkar Sakrikar, the election agent of respondent No. 1 for the last many years, that between the years 1955 and 1957 he published the Patrika known as Samyukta Maharashtra Patrika; that this Patrika strongly criticised the Congress; that because of these activities on his part he came in contact with leaders of Samyukta Maharashtra movement like Atre and S. M. Joshi and other workers of the S. S. P. like respondent No. 1, Satav, Tirodkar and others. These facts were admitted by him when he was asked questions which showed that Randive undoubtedly is in agreement with the policy of socialism and Samyukta Maharashtra movement. Such a political background on the part of Randive is insufficient to label him, however, as a partisan witness. It was because of this political background that efforts made to induce him as deposed to by him not to give evidence did not succeed. I accept his evidence that on September 18 and 19, 1967—just a day or two prior to his giving evidence in this case—efforts were made as deposed to by him, both on phone as well as by personal contact to induce him not to give evidence or at least to give evidence in an unsatisfactory manner. At the time when this evidence was led, no objection was taken as regards the admissibility of this evidence. Randive was cross-examined at full length on the other part of his testimony and it was thereafter that the contention was raised about the admissibility of the evidence of Randive in relation to the steps being taken to induce him not to give evidence in the case. Reliance was placed upon the decision of *Attorney General v. Hitchcock* (1847) 1 Exchequer 91 and it was contended that such evidence was not admissible to impeach the credit of a witness.

This evidence about the inducement being offered to Randive is not taken on record to impeach his credibility. It is admissible to show the conduct of the party who makes efforts to induce him not to give evidence. In *Hitchcock's* case, Pollock C. B. pointed out at p. 101 while considering the admissibility of such evidence with a view to impeach the credit of a witness, that was not admissible, the reason is that it is totally irrelevant to the matter in issue that some person should have thought fit to offer a bribe to the witness to give an untrue account of a transaction.

and it is of no importance whatever, if that bribe was not accepted. It is no disparagement to a man that a bribe is offered to him. He, however, added "it may be a disparagement to the person who makes the offer." These observations show that all such evidence is inadmissible to impeach the credit of a witness, but it may be admissible to show the conduct of the person who made the offer. Under section 8 of the Evidence Act, the conduct of any party or of any agent to any party, to any suit or proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or the relevant fact, and whether it was previous or subsequent thereto. Illustration (e) to this section is as under:—A is accused of a crime. The facts that either before or at the time of or after the alleged crime, A provided the evidence which would tend to give to the facts of the case an appearance favourable to himself or that he destroyed or concealed the evidence or prevented the presence of or procured the absence of the persons who might have been witnesses or suborned persons to give false evidence respecting it are relevant." This illustration, therefore, clearly shows that the conduct of a party or his agent in inducing the witness to give evidence in a particular manner is relevant and evidence to prove such conduct is, therefore, admissible. As this evidence was given for the first time by Randive, while he was in the witness box the petitioner would normally be entitled to lead further evidence in rebuttal of such evidence even though he had closed his case. This deposition relates to a period much after the closing of the case by the petitioner and it will always be open to him to lead further evidence to rebut such evidence. However, no application was made on behalf of the Petitioner after the evidence was recorded to lead any evidence in rebuttal.

It was urged that Randive in his evidence has clearly admitted that reference to God and Ballot Boxes by respondent No. 1 in his speech was made in such a manner that he thought that there was a personal attack on respondent No. 2 and that is why he did not take down those words, while writing down his notes at the meeting. He was, however, not asked how respondent No. 1 in his speech referred to or used the words "God and Ballot Boxes." His evidence was tested in cross-examination by reference to the reports of the speech of respondent No. 1 published in the issue of *Blitz*, *Maratha* and *Patriot*, but this cross-examination was taken only upto a point. When the report in *Blitz* (Ex. X-56) was shown to him, he said that respondent No. 1 did not say in his speech that he was standing against respondent No. 2 to explode the myth that he could not be defeated in Bombay or that not even God could win against him. Randive added that he said in different words and that the report in *Blitz* was not an accurate report. However, he was not asked what he said in different words. Even when the substance of the allegations reported in *Maratha* (Ex. X-23) was pointed out to him, he said that he would regard the statement that God could not win against respondent No. 2 because God was honest and respondent No. 2 was not, as a personal attack on respondent No. 2. Randive said that he said something like that in a different way but he was not asked what he said and in what manner. Even when his attention was drawn to the substance of the report of the speech in *Patriot* (Ex. X-78) he said that he did not think that respondent No. 1 said in his speech that respondent No. 2's supporters claimed that even God would not defeat their boss, or that he (respondent No. 1) agreed that God was a clean fighter and would not take to switching of ballot boxes. Randive said that respondent No. 1 did in his speech refer to God as well as the ballot boxes, but he was not asked at any stage how they were referred to. It was only thereafter that to a question by the Court he said how God and ballot boxes were referred to by respondent No. 1 in his speech. He answered that respondent No. 1 in his speech referred to God and ballot boxes by making the following speech:

"Congress workers said that God cannot defeat Patil. God is not in the election. I also cannot defeat him but voters can defeat Mr. Patil and when the ballot boxes will be opened, you will see that Patil has been defeated."

According to Randive, these words were spoken by respondent No. 1 in Hindustani and he has reproduced the actual words used by respondent No. 1 in Hindustani. This examination of his evidence shows that it is not the evidence of Randive that respondent No. 2 in his speech said that respondent No. 2 was elected by tampering the ballot boxes or by substituting them or that unlike respondent No. 2 God was honest.

Prafulla Bakshi, undoubtedly had contacts with respondent No. 1 in the past. He used to talk to respondent No. 1 on phone and sometimes he used to criticise the points made by him in speeches or otherwise. He admitted having invited respondent No. 1 just a few days before he gave evidence, to speak at the function at the Lions Club at Dahisar; he had contacts with respondent No. 1 when the issue of

Janta policy was mooted by the L.I.C. and in connection with the taximen's cover, however, because of these contacts I am not inclined to reject his testimony. His re-action when he was asked to give evidence may be noted. When respondent No. 1 telephoned him and informed him that he was required to be a witness he showed respondent for mentioning his name without previous consultation. He said that he was an insurance man and he did not want to be associated with such disputes; as an insurance man, he would like to be an insurance man in insurance business; people having different political views are agents and policy holders; that is why he did not like the idea of his name being associated as a witness.

Datta Pradhan admits having visited this meeting by chance. It was pointed out that his presence at this meeting was as a result of number of simultaneous coincidence. That this is so cannot be disputed. On that day, he was to address an election meeting at Mahim Causeway to carry on his election campaign, that that meeting started late but was over earlier than expected, as the cultural programme that was arranged did not take place; that when he left this meeting, he had no idea or intention to attend the Shivaji Park meeting, that he went from his election meeting with Bal Thakrey (one of the speakers at his election meeting) to go to his office at Marmik, that it was only that while he was passing by Shivaji Park that he got down from the car and attended the meeting; that at the time when he attended this meeting, Satav, a very sincere S.S.P. Worker, who is assisting respondent No. 1 in this case was by his side. It cannot be disputed that each one of the circumstances pointed out above is established and it is by chance that Pradhan happened to be present at this meeting at Shivaji Park. However, no reason is suggested on behalf of the petitioner why Pradhan should come forward to give false evidence in the case. At the time of the election he was himself a candidate for the Assembly seat, that he belonged to Bharatiya Jan Sangh Party, a political body not well inclined towards the Socialist Party. In his evidence, there is no suggestion made of any prior contact between him and respondent No. 1. It will not be proper to conclude that he was not present at this meeting simply because he was to address his election meeting on that very day.

Scrutinizing the entire evidence, it is not possible to hold that in the course of his speech at Shivaji Park, respondent No. 1 stated that respondent No. 2 used dishonest means or techniques to win the election or insinuated that respondent No. 2 won elections by tampering with ballot boxes or substituting the same or that even God could not defeat respondent No. 2 because unlike respondent No. 2 God was not dishonest or alleged that respondent No. 2 was a man of low character or had stooped to the commission of criminal offences with the object of winning elections or made any statements which would have conveyed such ideas or impressions.

Reference was made to some circumstantial pieces of evidence in support this charge of corrupt practice. In all three circumstances were relied upon. They are (a) an election appeal (Ex. 56) issued by respondent No. 1 to voters in the last week of August 1966; (b) a Complaint (Ex. X-49) filed by one V. L. Shanbhag on the night of February 22, 1967 at the Dongri Police Station and (c) a report of the interview given by respondent No. 1 to the correspondent of *Blitz* and published in its issue dated March 11, 1967 (Ex. 191).

It is admitted by respondent No. 1 that Ex. 56 was an appeal issued by him to voters in various languages—English, Marathi, Hindi, Gujarati and Urdu. In this appeal it is *inter alia* stated:

"It is this popular desire that has motivated me to clash with Railway Minister S. K. Patil for the South Bombay Lok Sabha seat. This I am doing, of course, against the advice of many of my friends and well-wishers who think that Patil is unbeatable—a myth I refuse to share."

"I believe that S. K. Patil is beatable and I am sure that you—the voter from South Bombay—will do it. In fact I have always considered it an insult to the intelligence and integrity of the South Bombay voter when people mentioned that Patil is an unscrupulous politician and has his 'ways and methods' of winning elections."

Respondent No. 1 was asked about ways and methods he had in mind of winning elections to which he made a reference in Ex. 56. He replied that it was not his opinion he was expressing in this particular sentence of the appeal. He said that even since he announced his candidature from Bombay South Constituency, people used to tell him that his standing from this constituency was suicidal, that respondent No. 2 was unbeatable, that he had his ways of winning elections, that this opinion came from the cross section of

the people belonging to all political parties, that whenever he tried to confront them and asked them what were those ways and methods, they would not specify but would merely say that respondent No. 2 could not be defeated, that none of them had moral courage to give explanation of what those methods were, that he did not try to convey or insinuate by this appeal that respondent No. 2 was an unscrupulous politician, that such a thing he himself did not believe, that he did not wish to convey that respondent No. 2 had, individual ways and methods to win election. He admitted that if a voter for money or for any other reason instead of putting his ballot paper in the ballot box gave it to respondent No. 2 for being put in the ballot box or for exchanging ballot boxes, he would consider such activity unscrupulous and illegal. He, however, pointed out that such a thing was not possible because the ballot paper had to be put in the ballot box in the presence of the polling officer. He denied that by this paragraph in Ex. 56 he intended to convey to the voter the insinuation that respondent No. 2 won the election by bringing the voter and manipulating the ballot boxes.

While considering the appeal (Ex. 56) it has to be remembered that Ex. 56 is not relied upon as an instance of a corrupt practice committed by respondent No. 1. I am not called upon to consider what would have been the position if such a plea was raised in this petition. The contents of Ex. 56, in my opinion, are not capable of throwing light upon what respondent No. 1 said at a public meeting held at Shivaji Park on January 31, 1967. What respondent No. 1 said at this meeting can ordinarily be proved by those who listened to his speech.

There is ample evidence in this case to establish that V. L. Shanbhag can be regarded as agent of respondent No. 1 as that term is understood in the election law, even though respondent No. 1 was not prepared to admit it and gave at diverse places during his cross-examination evasive replies when questions about V. L. Shanbhag were put to him and even declined to admit things which were quite obvious. There are a number of facts which could be regarded as fully established and proved about V. L. Shanbhag from the mere testimony of respondent No. 1 himself. V. L. Shanbhag was the Secretary of a Committee known as "George Fernandes for Parliament Samiti", that this Samiti collected funds with a view to carry on the election campaign to support the candidature of respondent No. 1, that Ex. 190 is a specimen of one of the coupons for Rs. 5 collected for the election fund of this Samiti, that the address given on this coupon is 358-A, Jagannath Shanker Sheth Road, Bombay-2, that this was the address of one of the election offices established by respondent No. 1 during the election period, that during this period, Shanbhag used to meet respondent No. 1 once in a week or 10 days, that such meetings used to take place between Shanbhag and respondent No. 1 at his election office at Haines Road, Opposite the Electric House, and that Shanbhag used to do election work for respondent No. 1. The evidence of respondent No. 1 that such election work was done by him of his own and not in consultation with him cannot be accepted. Reports are also published in the newspapers which show that Shanbhag was one of the speakers at the election meeting organised by the Sampoorna Maharashtra Samiti. Respondent No. 1 was a candidate sponsored by the Samyukta Socialist Party, that this party was a constituent unit of the Sampoorna Maharashtra Samiti, that his candidature was endorsed by the Bombay Unit of the Sampoorna Maharashtra Samiti and that Samiti organised various election meetings to support the candidates sponsored and endorsed by it. Reference can be had to a report published in the issue of Maratha dated February 9, 1967 (Ex. X-55). It is true that the contents of this exhibit are not proved as correct. But it is immaterial whether the contents are correct or not. What is relevant is whether the report of the type therein mentioned appeared in the issue of Maratha. Ex. X-55 shows that in Kumbhar Wada Assembly Constituency (Part of Bombay South Parliamentary Constituency) Sampoorna Maharashtra Samiti on February 9, 1967, organised a meeting at Hirabhaug Hall, C.P. Tank, at 9 p.m. that night and Vasudeo Shanbhag was one of the speakers at this meeting. Reference can also be had to the programme printed in the issue of Maratha dated February 18, 1967 (Ex. X-69). One of the items in this programme relates to election meetings arranged by George Fernandes for Parliament Samiti. This item shows that this Samiti intended to hold under the auspices of Sampoorna Maharashtra Samiti, various election meetings on that day at different times at night, at Zavbachi Wadi, Thakurdwar, at Dhanaji Street, at Bhat Bazar and at Falkland Road, that respondent No. 1 was to be one of the speakers at these meetings, that these meetings were arranged by the George Fernandes for Parliament Samiti of which V. L. Shanbhag was the Secretary. V. L. Shanbhag

was also at one time the Vice-President of the Bombay Labour Union of which Respondent No. 1 is the Principal founder and is its President even since its inception.

19th January, 1968:

V. L. Shanbhag as Secretary of George Fernandes for Parliament Committee on February 8, 1967 complained to the Election Commissioner, Delhi about unfair and unethical electioneering practice in defacing posters pasted on behalf of respondent No. 1. A copy of that letter is marked for identification as Ex. X-74. A copy of this letter was released by respondent No. 1 at a press conference held by him at Bristol Grill Restaurant on February 9, 1967. On February 12, 1967, a complaint was lodged by a person who gave his name as Vasudeo Laxminarayan Shanbhag residing at Noshirwan Mansion, Henri Road, Bombay-1 at Princess Street Police Station complaining about disturbances at an election meeting held at Dabholkar Wadi which was addressed by respondent No. 1. When the attention of respondent No. 1 was drawn to the entry in the station diary of Princess Street Police Station, he gave somewhat evasive answers. He said that he did not know whether such complaint was lodged. He did not recollect whether an incident of the nature mentioned in the station diary took place. He did not remember whether he addressed a meeting at Dabholkar Wadi on February 10, 1967. He was not able to say whether the signature in the station diary was that of V. L. Shanbhag. Even though respondent No. 1 is not prepared to admit who lodged the complaint, there can be no doubt, having regard to the name of the complainant as Vasudeo Laxminarayan Shanbhag, his address as Noshirwan Mansion, which is the same place as the election office of respondent No. 1, and the fact that respondent No. 1 was a speaker at the meeting, that this complaint is lodged by V. L. Shanbhag who was the Secretary of George Fernandes for Parliament Committee and who used to meet respondent No. 1 quite often during the election period.

On behalf of the petitioner evidence is also led of Michael Aranha (Ex. 175), Inspector of Police in charge of Dongri Police Station, to prove that on February 22, 1967, a complaint was lodged at that police station by V. L. Shanbhag and an entry in respect thereof was made in the station diary. That entry is Ex. X-49. Michael Aranha has deposed that he made the entry in the station diary (Ex. X-49) as a result of a complaint made by Shanbhag on February 22, 1967 at 11-40 p.m. This entry states: One Shri Shanbhag, who stated that he was one of the subordinates of Shri George Fernandes, called at the P.I.'s office, asked for permission to keep his own private guard of five men in the compound of Noon Baug (Central Polling Station) in addition to the armed S.R.P. guard and the guard of one S.I. and 15 men of Dongri Police Station. His reasons for making this request are that he had received information that Shri S. K. Patil would make an attempt to replace ballot boxes with forged ballot papers in his favour since Shri George Fernandes was leading him by 22,000 votes. He was told that Shri Agashe, the Returning Officer, was sleeping on the first floor of Noon Baug where the ballot boxes are kept along with 7 men of Shri George Fernandes, hence his fears were unfounded but he said that he was also told that Shri Agashe was bribed by Shri S. K. Patil with a huge sum of money. Such a permission was refused to Shanbhag to keep his men in the compound since it was apprehended that they themselves may play mischief by resorting to arson or other tactics. As the final result of the poll cannot be forecast in spite of the fact that respondent No. 1 was in the lead and it might suit the convenience of respondent No. 1 to do some mischief himself by keeping such men in the compound of the building. The entry further shows that it was also learnt from S. C. S. I. Kadam Bande that Shri Agashe was also approached by Shri Shanbhag with this request, but he refused to permit any outsider excepting the persons already there. Aranha has also in his evidence stated that he otherwise knew Shanbhag and had occasion to see him in the past. He mentioned those occasions while giving his evidence. He said he first came in contact with V. L. Shanbhag in or about June or July 1966 in connection with a certain dispute over the closure of My Ideal High School situate at Ibrahim Rahimtoola Road. After this contact V. L. Shanbhag telephoned to Aranha 3 or 4 times in connection with the action taken by the police station in respect of taxi drivers and some accidents. Shanbhag also approached him in this matter stating that he was a legal adviser of the Bombay Taximen's Union of which respondent No. 1 was President. He also stated that

during the election period between the middle of December 1966 and February 21, 1967, Shanbhag visited the police station several times in his capacity as the Secretary of George Fernandes' election committee; that he came to the police station in connection with obtaining permission for holding meetings and some complaints connected with election propaganda. Aranha also mentioned that in or about the month of August 1967, Shanbhag had come to him stating that he wanted some records in connection with the election petition including the complaint (Ex. X-49). He, however, told him that the documents would be produced in Court if the Court so directed. There is no cross-examination of the evidence of Aranha worth mentioning as regards the instances that he mentioned of his coming in contact with Shanbhag. Under the circumstances, I have no hesitation in accepting his testimony even though this evidence was taken on Commission.

The above facts and circumstances provide ample evidence to hold that V. L. Shanbhag was the agent of respondent No. 1 as understood under the Election Law and it was he who on the night of February 22, 1967 lodged a complaint at the Dongri Police Station which is recorded by Michael Aranha, Inspector of Police at the Police Station. (Ex. X-49) is the entry in the station diary in relation to that complaint.

It is, however, difficult to understand how the lodging of such a complaint by V. L. Shanbhag on the night of February 22, 1967 strengthens the case of the petitioner as regards what respondent No. 1 said during the course of his speech at Shivaji Park. What Shanbhag did on that day cannot be correlated to what must have been said in the course of the speech on January 31. The lodging of such a complaint, in my opinion, does not go to establish that respondent No. 1 in the course of his speech at that meeting at Shivaji Park used the words that are attributed to him.

The third circumstance relied upon is the report of an interview given by respondent No. 1 to the correspondent of Blitz and published in the issue of this newspaper dated March 11, 1967 (Ex. 191). In the course of this interview, respondent No. 1 was *inter alia* asked the question: Do you think there was considerable garrymandering and rigging in the elections, particularly in North Bombay? The report shows the answer given by respondent No. 1 as under:

"First I shall tell you about my constituency. I set up an election machinery which was not only fool-proof but mischief-proof. We had three election agents in every booth. We followed each taxi carrying the ballot boxes with our own taxis, and we guarded every ballot box. On the 22nd night I was myself in the streets going round the booths. So no mischief was possible in my constituency.

But in North Bombay there was lack of organisation which made mischief possible."

When the attention of respondent No. 1 was drawn to the report (Ex. 191) he said that these are normal precautions which every candidate takes at the election. This time for the first time the Election Commissioner said that after the ballot boxes are kept in the Central Counting Station, the room will be sealed and the candidates would be allowed to keep their own guard apart from the regular police guard. The Returning Officers conveyed to the candidates or their agents the routes by which the ballot boxes would be carried from the polling booths to the counting stations, so that if they so desired, they could make arrangements to accompany them when the ballot boxes were taken from the booths to the counting stations. He said that he had not set up any election machinery with the conscious object of preventing mischief including tampering of ballot boxes. He said that the entire interview with the reporters of Blitz was in the nature of discussion and the sequence of sentences in this report was not his. In the course of the discussion he used the sentences which are there in the report, but he was not sure whether he used those exact words. He said that no special precautions or instructions were given for keeping election agents in every booth for following each taxi carrying the ballot boxes with his taxi or for guarding every ballot box. These were the normal precautions which the Election Commissioner at the time of February 1967 election had issued.

Even if the cumulative effect is taken of the three circumstances relied upon, they do not much advance the case of the petitioner. The principle of law as regards circumstantial evidence in criminal cases is well settled. In cases

dependant on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established; all the facts so established should be consistent only with the hypothesis of the guilt of the accused; the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. Judged by this principle the three circumstances relied upon on behalf of the petitioner cannot throw much light upon the case of the petitioner as regards the speech made by respondent No. 1 at the Shivaji Park meeting.

Criticism is made on behalf of the petitioner for failure on the part of respondent No. 1 in examining any one of the other four Samiti sponsored candidates who spoke at this meeting. It is true that neither side has chosen to examine either Acharya Atre, M. R. Gokhale, Dange or Krishna Menon as their witnesses in the case. In fact Acharya Atre was cited as witness on behalf of the petitioner and was served with a summons, but he is not examined as a witness. Simply because these candidates were sponsored by the Samiti or their candidature was endorsed by the Samiti, the law does not cast any onus on respondent No. 1 to examine any of these witnesses to disprove the petitioner's case. The burden of establishing the charge of corrupt practice is entirely on the petitioner and no adverse inference can be drawn against respondent No. 1 for not calling any one of the other principal candidates as his witness in the case.

It may be remembered that Chandrakant G. Desai (Ex. 78), the reporter of Free Press Journal, was examined as a witness on behalf of the petitioner to establish what happened at a press interview held by Jagadguru Shankaracharya and the proceedings of a meetings held at Chowpaty after the election. His cross-examination showed that he also covered the meeting at Shivaji Park as a reporter of Free Press Journal, but he was asked no questions as regards the speeches made at that meeting. The evidence of Chandrakant was concluded on September 11, 1967, but no application was made on that day to further examine-in-chief this witness as regards what happened at the meeting held at Shivaji Park on January 31. It was only after over a fortnight that on September 29, 1967 that an application was made on behalf of the petitioner to recall Chandrakant for further examination-in-chief in connection with what happened at the public meeting held at Shivaji Park. That application was opposed on behalf of the respondent No. 1 and was rejected by me.

As pointed out earlier, the onus of establishing a corrupt practice is undoubtedly upon the petitioner. That onus has to be discharged not on mere proof of preponderance of probability as in the trial of a civil suit; the corrupt practice has to be established beyond reasonable doubt by evidence which is clear, unambiguous and convincing. On the evidence of Mahadik, Ramkumar, Tank-sale, Bhide, Khembete and Bendre and on the circumstantial pieces of evidence relied upon and the other factors referred to, it is not possible to hold that in his speech at Shivaji Park, respondent No. 1 uttered the words that are attributed to him in paragraph 2J(i) of the petition. This charge of corrupt practice is, therefore, not established. It is not necessary to consider the other contentions that are sought to be urged on behalf of respondent No. 1 in connection with this charge of corrupt practice.

The third instance of a corrupt practice by respondent No. 1 relates to the statements made by him at a press conference held on February 9, 1967 at Bristol Grill Restaurant. When the petition was filed on April 7, 1967, there was no averment therein in connection with this corrupt practice. After annexure Ex. E to the petition was introduced therein, pursuant to the order dated July 3, 1967, there is reference to the extract of a report published in newspaper Maratha dated February 11, 1967. One of the items referred to in Ex. E is this extract under the heading "Atrocities of Sadoba & Co. for fear of defeat". An application for proper averment in connection with this charge of corrupt practice was made for the first time on September 12, 1967 and that was granted by my order dated September 15, 1967. Pursuant to this order, paragraph 2J(ii) was introduced in the petition to plead what respondent No. 1 is alleged to have stated at this press conference. It is alleged in this paragraph that at this press conference respondent No. 1 stated that respondent No. 2 was guilty of unfair and unethical electioneering practices; that during two weeks preceding the said press conference, about 70 persons known to be dangerous characters had been let out on paroles to take part in the Congress election campaign; a few persons due for externment had been allowed to stay and some such persons

already externed had been allowed to return and that these bad characters whom respondent No. 1 also called Goondas had been set free and been placed at the disposal of respondent No. 2. It is further pleaded that the report of the press conference was published in a large number of newspapers; that these allegations are clearly false; that they were deliberately and maliciously made; that respondent No. 1 believed them to be false and did not believe them to be true and were in relation to the personal character and conduct of respondent No. 2 within the meaning of section 123(4) of the Act.

The contention on behalf of respondent No. 1 is that at this press conference he did not utter the statements which are set out in paragraph 2J(ii); that in any event, these statements are not in relation to the personal character or conduct of respondent No. 2; that they constitute a public criticism of the acts of the Congress workers; that they are in respect of political or public character of respondent No. 2. Lastly, it was urged that it is not pleaded in the petition that these statements are reasonably calculated to prejudice the prospects of respondent No. 2's election.

The fact that a press conference was held by respondent No. 1 at Bristol Grill Restaurant is not a matter in dispute. It is material to find out what he said at this press conference. The petitioner himself was not present at this press conference. The declaration clause of the petition at the time when Ex. E is introduced, says that this particular item in Ex. E was introduced simply because of such a report in Maratha. He had then not received any information from any individual in connection with what happened at this press conference.

What transpired at this press conference is, however, sought to be established by the evidence of S. Dharmarajan (Ex. 104), a reporter of the Times of India, who was present at this press conference. Dharmarajan was first asked in his evidence-in-chief to state from his memory what respondent No. 1 said at this press conference. He said that respondent No. 1 said that respondent No. 2 was indulging in some malpractices; that his election meetings were disturbed by men of respondent No. 2. He, however, did not remember the actual words used by respondent No. 1. He only remembered the substance of what respondent No. 1 said. He added that posters on behalf of respondent No. 1 were obliterated or effaced by Congress workers in Bombay South Parliamentary constituency; that externees were not externed by the Commissioner of Police; that some externees were used for election campaign; that some persons were released. This was all that he said initially in his evidence-in-chief. In this evidence there was absolutely no reference to any statement being made by respondent No. 1 in relation to the personal character or conduct of respondent No. 2. It was thereafter that his attention was drawn to the report (Ex. 105) published in the issue of Times of India dated February 10, 1967. This news item was published as a result of the report made by Dharmarajan. After reading it he added that at the press conference respondent No. 1 stated that during the last two weeks, 70 persons known to be dangerous characters had been let out on parole to take part in the Congress election campaign; that a few persons were due for externment had been allowed to stay and some had returned. In his cross-examination he frankly admitted that he had no independent recollection of what respondent No. 1 stated at the press conference and that it was only after reading the report (Ex. 105) that he was able to say what respondent No. 1 stated at the press conference.

The report (Ex. 105) shows that the supporters of respondent No. 1 had lodged protest with the Election Commissioner against what they termed as unfair and unethical electioneering practice by respondent No. 2 and his men. A letter sent by the Committee to the Election Commissioner at Delhi and a telegram sent to him by the South Bombay Citizens' Committee were released by respondent No. 1 at this press conference. At this press conference respondent No. 1 said that respondent No. 2's action was against the code of conduct accepted by the political parties; that respondent No. 2's men indulged in stone throwing at meetings held by him and threatened and beat his men putting up posters or preventing them from being removed; respondent No. 1 reiterated his appeal to respondent No. 2 that he should come with him on a common platform or any third party platform. He said that his posters were being changed by Congress party; that it has been observed that on his posters the Congress party is pasting a slip printed 'elect' in place of 'defeat' and "who vote for" in place of 'against' in posters reading "You must defeat S. K. Patil".

and "It's the people against S. K. Patil." At this press conference respondent No. 1 said that he was not getting enough co-operation from the police while referring to stone throwing at the meetings and assault on his workers, and he was worried that things might go out of hand. He further alleged that during the last two weeks 70 persons known to be dangerous characters had been let out on parole to take part in the Congress election campaign; that a few persons due for externment had been allowed to stay and some had returned; that he had a few names, but he was not releasing them for obvious reason; that he had been told that incidents and conditions were being created, so that the election in Bombay could be postponed; that by announcing central rates of dearness allowance to all State Government employees, numbering 4 millions, the Congress party had tried to secure about 10 million votes in the country.

Though Dharmarajan has no independent recollection of what happened at this press conference, apart from reading the report (Ex. 105), respondent No. 1 at one stage in his evidence clearly admitted that Ex. 105 is a substantially correct report of what he stated at the press conference. In view of this admission, I would regard that Ex. 105 is a correct report of what respondent No. 1 said at this press conference.

Respondent No. 1 at some places tried to justify why he said certain things at the press conference and later on even wanted to indicate that this report (Ex. 105) is not an accurate report of what he said at the press conference. Respondent No. 1 said that at this press conference, he released letter (Ex. 67) which he wrote to respondent No. 2; that at this press conference he showed to the pressmen a big brick which was thrown at his workers at Kitchen Garden Lane at Jhaveri Bazar and said that one Ashwini Kumar Kamani one of his workers, got injured as a result thereof. He said whenever he addressed meetings in Bombay even outside his constituency, people used to complain to him that some notorious characters who were due for externment were not externed, that externment orders against them were stayed, that convicts were released on parole and that these men were creating disturbances in the meetings; that in this connection the name of Barkya Dada and one Lumba were mentioned; that it was on the basis of this information at the press conference he said that the convict persons were released on parole and the externment orders were stayed and that these men were helping the Congress party. In answer to a question, he replied that about 50 or 70 persons were involved. At this press conference, according to respondent No. 1, there was no mention of the name of respondent No. 2 in any of these matters. He said that he did not say at this press conference that bad characters and Goondas were set free and were placed at the disposal of respondent No. 2. In his cross-examination he said that he learnt that neither Barkya Dada nor Chunilal Lumba was a convict who was released on parole or was an externnee who was not seen off or was an externnee who was permitted to return, that apart from the name of Barkya Dada, he had in mind two other persons Karimshah and Ahmed Sarang as persons who were creating difficulties for him in the Bhandi Bazar locality. A little later in his cross-examination he said that he did not remember having said at this press conference that respondent No. 2's men indulged in stone throwing at meetings. According to him, he said that Congressmen did this thing. Similarly, he added that he did not say that respondent No. 2's men beat up his men putting up posters; he said that he made such a reference only to Congressmen.

On scrutinizing the entire evidence, it appears that Ex. 105 is substantially an accurate report of what respondent No. 1 said at this press conference. Respondent No. 1, however did not say that respondent No. 2 was guilty of unfair and unethical electioneering practice. Respondent No. 1, however, referred to a letter which his supporter had written to the Election Commissioner complaining about what they described as unfair and unethical electioneering practice by respondent No. 2 and his men. He also said during the course of this press conference that during the last two weeks, 70 persons known to be dangerous characters had been let out on parole to take part in the Congress election campaign; that a few persons due for externment had been allowed to stay and that some such persons already externed had been allowed to return. It is further alleged in paragraph 2J(ii) of the petition that in the course of his statements at this press conference, respondent No. 1 stated that these bad characters and Goondas had been set free and had been placed at the disposal of Sadoba, respondent No. 2. Ex. 105 shows that such a statement is not made by respondent No. 1 during the press conference. The reference was only to such persons taking part in Congress election campaign and there is no reference that they were placed at the disposal of Sadoba. Ex. 105, therefore, shows that respondent No. 1

during the course of this press conference did not say that these bad characters and Goondas were set free and were placed at the disposal of respondent No. 2.

The question then arises whether all or any of the statements made by respondent No. 1 at this press conference are false. At this press conference respondent No. 1 released to the reporters present a copy of the letter which V. L. Shanbhag had written to the Election Commissioner complaining of certain unfair and unethical electioneering practice. Respondent No. 1 has admitted in his evidence that Ex-74 is a correct copy of the copy of the letter that he released at this press conference. This letter shows that the complaint to the Election Commissioner was that the posters pasted in Bombay South Parliamentary constituency is canvass for respondent No. 1 were defaced by pasting slips on some words thereon and were converted by such slips to create an impression that these posters were to support the election campaign of respondent No. 2. Shanbhag described such tactics in this letter as highly unethical and unfair and, according to him, such tactics were adopted by respondent No. 2 and his men. There is, however, no evidence on record that such practice or tactics were not followed by the supporters of respondent No. 2. If posters reading "You must defeat S. K. Patil" or "Now it is the people against S. K. Patil" are defaced by pasting slips so as to read "You must elect S. K. Patil" or "Now it is the people who vote for S. K. Patil", this certainly will be unfair and unethical. Respondent No. 2 in his evidence has not stated that such complaints were not genuine or were false.

It also appears from evidence that on February 7, 1967, respondent No. 1 wrote a letter (Ex. 67) to respondent No. 2. By this letter he pointed out to respondent No. 2 that two major incidents of breach of decency in electioneering had taken place on the previous night. These incidents relate to his volunteer being threatened with a knife and to his supporters pasting posters being mercilessly beaten. By this letter respondent No. 1 suggested that the Sarvodaya Mandal of Bombay should supervise electioneering by all candidates in Bombay South constituency or that they should undertake joint campaigning. In this letter he also referred to one of his workers Ashwani Kumar Kamani being hurt as a result of stone throwing at a meeting held near Mangaldas Market. This letter is replied to by respondent No. 2 by his letter dated February 9, 1967 (Ex. 119). In this reply respondent No. 2 has not dealt with the allegations made in respondent No. 1's letter by stating that he does not reply to the matters which are full of innuendoes or unfounded accusations. He added that so far as violence in the election is concerned, he condemned it as strongly as anyone could. He added in this letter that persons who might be responsible for attacking Congress leaders like Shri B. M. Chinai should not talk of other people's violence, that it would be the best policy to have a grain of practice than an ounce of gratuitous advice. This reply shows that respondent No. 2 has in his reply not tried to deal with specifically the statements made in respondent No. 1's letter. Even while he gave evidence in Court, he has not stated anywhere in his evidence-in-chief that the statements in letter (Ex. 67) are incorrect. It is the copies of the letters (Ex. 74 and 67) that were released at the press conference and there is no evidence worth consideration to hold that the statements made in these letters were false.

Respondent No. 2 in his evidence stated that during election campaign, so far as he knew, no externees were permitted to return to Bombay to participate in his campaign of election of the Congress or on his behalf. He did not know whether the execution of any externment order was being delayed against any externec in order to enable him to participate in election campaign of the Congress or his election campaign. He did not know whether any convict was released on parole in order to enable him to participate in the election campaign of a Congress candidate or his election campaign. He did not engage the services of any externec permitted to return to Bombay or of any externec against whom the operation of the externment order was stayed or delayed or of a convict returned on parole.

To the same effect is also the evidence of A. G. Rajadhyaksha (Ex. 86), the Commissioner of Police, Bombay. He stated that between August 1966 and February 1967, some externees were permitted to come to Bombay, even though the externment orders against them were in force. But none of these externees was permitted to participate in election campaign either on behalf of the Congress or on behalf of any other candidate; that so far as he knew, no externment order was held in abeyance in order to enable any person to participate in election campaign of any candidate; that no Goonda was set free in order to enable him to participate in the election campaign of respondent No. 2; that so far as he was aware, no Goonda was under detention at that time.

This evidence of respondent No. 2 and of Rajadhyaksha, the Commissioner of Police, clearly establishes that amongst the statements set out in paragraph 2J(ii) of the petition, the following statements made by respondent No. 1 at the press conference are false. They are that during the two weeks preceding the said press conference, about 70 persons known to be dangerous characters had been let out on parole to take part in the Congress election campaign; that a few persons due for externment had been allowed to stay and some such persons already externed had been allowed to return.

The question arises whether the above false statements are in relation to the personal character or conduct of respondent No. 2. In the statements proved to be false, there is no suggestion that respondent No. 2 is either concerned with the release of such persons on parole or for return of externees to Bombay or for non-execution of the orders against externees or with their participation in the Congress election campaign. These false statements relate to the alleged action of the State Government and the Commissioner of Police. Respondent No. 1 has admitted that he did not make any enquiry either with the Commissioner of Police or with the State Government before making such a statement at the press conference. But these false statements of releasing dangerous characters on parole or allowing externees to return or staying execution of orders against externees with a view that they may participate in the Congress election campaign cannot be regarded as a reflection upon the personal character or conduct of respondent No. 2. The statement established to be a false statement is not in relation to the personal character or conduct of respondent No. 2. In view of this finding, it is unnecessary to consider the other contention of respondent No. 1 in relation to this charge of corrupt practice. As the false statement made at this press conference by respondent No. 1 is not in relation to the personal character and conduct of respondent No. 2, it is not possible to hold that respondent No. 1 is guilty of any corrupt practice under section 123(4) by reason of his making such false statement.

The last instance of the corrupt practice alleged to be committed by respondent No. 1 personally relates to a speech made by him at an election meeting held on February 10, 1967 at Sabu Sidiq Chawl. This instance was pleaded in the petition as a result of the amendment allowed by me by my order dated September 15, 1967. It is pleaded in paragraph 2J(iii) of the petition. The allegation is that during the course of his speech, respondent No. 1 stated that respondent No. 2 was an American agent, that he was a Dada of capitalists and that Shiv Sena was his actual creation. It is said that thereby respondent No. 2 was shown to be a person of low moral character who indulged in the activities peculiar to Goondas, that he was an agent of a foreign country and associated with a movement, like Shiv Sena which was abhorant to a large number of voters in the constituency, particularly non-Marathi speaking linguistic minorities. It was further pleaded that the said allegations were clearly false, that they were made deliberately and maliciously, that he believed them to be false or did not believe them to be true and that they were in relation to the personal character of respondent No. 2 within the meaning of section 123(4) of the Act.

The contentions of respondent No. 1 about this charge of corrupt practice are that respondent No. 1 in the course of his speech did not utter the statements attributed to him in paragraph 2J(iii) of the petition. In the alternative, it is contended that even if such statements are proved to have been uttered by him, they merely express an opinion and are not publication of statements of facts, that these statements do not relate to the personal character or conduct of respondent No. 2, that they constitute a public and political criticism of the activities of respondent No. 2 and that it is not even averred in the petition that these statements were reasonably calculated to prejudice the prospects of respondent No. 2's election.

To establish what statements were made by respondent No. 1 during his speech at this election meeting, the petitioner has brought on record a report (Ex. 111) made by a police reporter who covered this meeting. Ex. 111 is a report in a standardized form made by a police reporter which gives particulars about the place of the meeting, the name of the party under whose auspices it is held, the name of the President at this meeting and the speakers who spoke thereat. It also furnishes other particulars in connection with what happened at the meeting and the speeches made thereat. This report shows that about 300 persons attended this meeting and three persons including respondent No. 1 spoke at this meeting. The report of respondent No. 1's speech in Ex. 111 is given as follows: Respondent No. 1 in his speech said that respondent No. 2 is the Dada of the capitalists; that he is an agent of America; that he would sell this country to

America; that Shiv Sena belonged to him and it should be boycotted; that if inflation and corruption is to be destroyed, then people must defeat Congress; that the Congress could not solve the food problem; that respondent No. 1 posed a question at this meeting: what right then Congress had to remain in power; and he hoped that people would elect the Samiti candidates to Parliament and the legislative assembly.

Ordinarily, the Court will readily accept a contemporaneous report made by a Police officer as the best evidence of what a particular speaker said at a meeting. A police reporter who covered the meeting cannot be labelled a partisan witness. In the present case, however, the evidence of Ramesh Mahajan (Ex. 110), the police reporter who covered this meeting suffers from serious infirmities. He cut a very sorry figure in the witness box and appeared to be almost totally blank and nervous. In his evidence he said that he would not be able to remember what was said at this meeting without reference to his report. When he read the report, he remembered what he heard at that meeting. Even after going through the report, he said that he did not remember every word that was said at the meeting. He only remembered some part. He has stated that the report (Ex. 111) was made by him and it is correct. He said in his cross-examination that he took down notes of whatever he considered to be important for the purpose of preparing his notes. He did not follow any principle for taking notes of points which he considered important. He did not remember how long respondent No. 1 spoke at this meeting. He added that the notes that he made at the meeting were snorter than the report that he submitted to the superior officers. He was unable to say whether while preparing the report, he used the actual words spoken by the speaker at the meeting. At one stage, he said that respondent No. 1 spoke at this meeting in Hindi, but at a later stage he said that he could not say whether his speech was in Hindi or Hindustani. The report (Ex. 111) submitted by him is in Marathi and he was asked various questions about the words he used in this report for reporting the speech of respondent No. 1. One of the words used by Mahajan in his report is 'Bhandvaldar' and when he was asked what word respondent No. 1 used in his speech to convey this idea, he replied that he could not say that. He was unable to say whether respondent No. 1 in his speech used the word 'Bhandvaldar' or 'Bhandvalshahi'. To convey the idea that respondent No. 2 is the agent of America in his report (Ex. 111) Mahajan has used the words "Americacha Nastak Ahe". Mahajan was asked what words were used by respondent No. 1 to convey this idea and he replied that he did not remember what words were actually used by respondent No. 1 to convey this idea in his speech. He was not able to say any whether respondent No. 1 has used the word 'Sathidar' in his speech. He said that as the speech was delivered about seven months ago, he could not say what word was used by respondent No. 1. He also said that he did not remember what actually respondent No. 1 said about Shiv Sena to which he made a reference in his report. In his report he has said "Shiv Sena Hi Sa. Ka. Patlanchi Ahe." He was asked to translate these words in Hindi, but he was unable to do so. This evidence of Mahajan shows that it will be completely unsafe to place any reliance upon his report (Ex. 111) to ascertain what respondent No. 1 said at this meeting about respondent No. 2.

Besides the evidence of Mahajan, on behalf of the petitioner two other witnesses—Abdul Sattar (Ex. 114) and Ilyas Azmi (Ex. 164)—were examined to establish what respondent No. 1 said at this meeting about respondent No. 2. Abdul Sattar is working as a Development Officer in the Life Insurance Corporation and he is an ordinary resident of Malad, a suburb of Bombay, which is miles away from the place Sabu Sidiq Chawl where this meeting was held at night. According to Abdul Sattar, in the course of his speech respondent No. 1 said that respondent No. 2 is the agent of America; that he is going to sell our country to America; that he is the Dada of capitalists; that Shiv Sena has the backing of respondent No. 2.

The other witness Ilyas Azmi is an active worker of the Congress and he said that he attended this meeting. In the course of his speech respondent No. 1 stated that all these years, Congress had done nothing for the people; that respondent No. 2 was an agent of foreign industrialists and capitalists; that respondent No. 2 claimed that he was a sympathiser of Muslims, but that was not so; that he created Shiv Sena; that Shiv Sena was run by the funds of respondent No. 2; that respondent No. 2 was not the candidate of poor persons, but was the Dada of big industrialists of India.

I am not impressed by the evidence of either of these two witnesses. Abdul Sattar is an ordinary resident of Malad, a place several miles away from Sabu

Sidiq Chawl, where the meeting was held. He says that it is his practice every day to go home only at about 11 or 11-30 p.m. even though he stays there with his family. As Development Officer he used to go out to procure work from every agent. On the day of this meeting, i.e., on February 10, 1967, he said that he had been to his friend Issak Batatewala at about 6-30 p.m. He left his house after about 45 to 50 minutes. The meeting at Sabu Sidiq Chawl was held after 8-15 p.m. and to justify his presence at this meeting, he said that the intervening time he spent in taking tea in Radio Restaurant and in doing some work in the restaurant while taking tea. He said that there was no particular hurry for doing the work in the restaurant. He was, however, unable to give particulars of the work that he did there. His presence at this meeting is highly unnatural. He is unable to say whether there were loudspeakers at this meeting or not. He was unable to say or explain the context in which respondent No. 1 in his speech stated that respondent No. 2 was the agent of America. He says that he remembered that respondent No. 1 stated that respondent No. 2 is the Dada of capitalists because a serious attack was made on him. He remembered about Shiv Sena because he considered that important, but he was unable to give any reason why he thought that to be important. He said that about a month and a half or two months before he gave his evidence, he talked about this speech to one H. P. Samant, but he was not sure about his initials. He said at this time Samant asked him whether as a Development Officer, he used to move from place to place and whether he attended meetings and he said 'Yes' and he mentioned the meetings that he attended. He said Samant asked him whether he should include his name in the list of witnesses and he replied in the affirmative. He then enquired for what he was to be a witness and he was told that he had filed an election petition and his presence was required to give evidence in that case. He said that before he stepped into the witness box, he knew that he was to give evidence about the meeting held on February 10, 1967 at Sabu Sidiq Chawl, but he did not know what he had to say. He was unable to say who addressed this meeting before respondent No. 1. He was unable to reproduce any part of the speech made by other speakers at this meeting. The name of Abdul Sattar is mentioned as a witness in the third list of witnesses that was filed only on August 22, 1967. The evidence of Ilyas Azmi also suffers from several infirmities. He is an active member of the Congress and he worked for respondent No. 2. He was the polling agent of respondent No. 2 at the election. He knew Mr. Patkar, the son-in-law of respondent No. 2. Even though in his evidence he refers to having a talk with the petitioner before he gave evidence, the petitioner does not in his evidence refer to any such talk of Ilyas Azmi coming forward to give evidence in this case. In view of these infirmities in the evidence of Abdul Sattar and Ilyas Azmi, Mr. Cooper, when he was arguing his case, frankly conceded that it would not be proper for him to submit that the Court should, on the testimony of these two witnesses, Abdul Sattar and Ilyas Azmi, hold that respondent No. 1 in the course of his speech uttered the words that were attributed to him.

Respondent No. 1 has given evidence of what he said at this meeting. In his speech he referred to the food problem and the PL 480 deal, to the campaign that was directed against him about his place of birth. He rebutted such campaign by saying that he had no say about his place of birth. He referred to the campaign that Shiv Sena was making against him. He condemned the activities of Shiv Sena. He referred to the housing problem of Bombay and held the Government responsible for not solving the housing problem. He denied having said at this meeting that respondent No. 2 was the Dada of capitalists. He said that he called him a friend of the capitalists. To convey the idea of friend, he used the Hindustani word 'Dost'. He denied having said at this meeting that respondent No. 2 was an agent of America or of foreign industrialists or capitalists or that Shiv Sena belonged to respondent No. 2. He, however, said that Shiv Sena was campaigning against him and wanted him to be defeated and that Respondent No. 2 should be elected. He referred to various other things which he said at this meeting, but it is not necessary to reproduce them as they are not germane to the part of the controversy in this case.

In view of the serious infirmities in the evidence of Mahajan, Abdul Sattar and Ilyas Azmi, it is not possible to hold that the charge levelled against respondent No. 1 in paragraph 2J(iii) of the petition is proved. I am not prepared to hold on their evidence that in the course of his speech at Sabu Sidiq Chawl, respondent No. 1 said that respondent No. 2 was an agent of America or that he was a Dada of capitalists or that Shiv Sena was his actual creation or conveyed the idea that respondent No. 2 was a person of low moral character or indulged in activities peculiar to Goondas or was an agent of a foreign country or was

associated with movement like Shiv Sena or used any words to convey this idea. It is, therefore, unnecessary to consider the other contentions urged on behalf of respondent No. 1 in relation to this speech at Sabu Sidiq Chawl.

These are all the instances of corrupt practices alleged to be committed by respondent No. 1 personally. The petitioner has failed to bring home such commission of corrupt practices on the part of respondent No. 1.

The second category of corrupt practice under section 123(4) relates to corrupt practice committed by a person other than respondent No. 1 but in his immediate presence. Only one instance of such corrupt practice is relied upon. This pertains to a speech made by Mr. Madhu Limaye at a public meeting held at Chowpaty on January 8, 1967. That meeting was presided over by respondent No. 1 himself.

In paragraph 2E of the petition reference is made to various false statements alleged to be made by Jagadguru Shankaracharya at the time of his press conference held in Bombay on February 16, 1967. In this paragraph Jagadguru is alleged to have stated that respondent No. 2 had a hand in the incidents which took place at Delhi on November 7, 1966 and in particular the arson committed at the house of the Congress President and injuries inflicted on the inmates of that house. It was insinuated that respondent No. 2 had participated in a plan to have the Congress President assassinated. After referring to this statement alleged to be made by Jagadguru Shankaracharya, it is further pleaded that earlier such allegations had been made by Mr. Madhu Limaye, who contested elections to Lok Sabha on the Samyukta Socialist Party ticket, that the said allegation by Jagadguru Shankaracharya and Mr. Madhu Limaye were given wide publicity in Maratha; that they were inspired by respondent No. 1 and were made with his consent or approval or for his benefit; that they tended gravely to impair the personal character and conduct of respondent No. 2 and prejudice the prospects of his election and that this constituted a corrupt practice within the meaning of Section 123(4) of the Act. Nowhere in this paragraph or in any other part of the petition reference was made to the time when or the place where such allegations were alleged to have been made by Madhu Limaye. By his Advocate's letter dated July 3, 1967 (part of Ex. 66) respondent No. 1 called upon the petitioner's Advocate to furnish particulars of the time, day and place where Mr. Madhu Limaye made such allegations and the names of the persons to whom such allegations were made. By the letter dated August 4, 1967 (also part of Ex. 66) the petitioner's Advocate stated that such speech was made by Mr. Madhu Limaye at Calcutta and Bombay on November 20, 1966 and January 8, 1967 respectively, that the report of the first speech appeared in Bombay edition of Indian Express dated November 21, 1966, that the second speech was made at a public meeting held at Chowpaty when he addressed SSP election propaganda meeting, that respondent No. 1 was present at that meeting and he presided over that meeting. Later on, while the evidence of the petitioner was being taken in this petition on September 12, 1967, an application for amendment of the petition by introducing therein *inter alia* paragraph 2J(iv) was made and I allowed the said application by my order dated September 15, 1967. It is significant to notice that even though in the letter giving particulars reference is made to the speech made by Mr. Madhu Limaye both at Calcutta and at Bombay, the allegations in paragraph 2J(iv) of the petition are only restricted to the statements alleged to be made by Mr. Madhu Limaye at a meeting held at Chowpaty in Bombay on January 8, 1967. It is pleaded in this paragraph that in the course of his speech at Chowpaty, Mr. Madhu Limaye alleged that respondent No. 2 had a definite hand in the riot that took place in Delhi in early November, 1966 during the course of which an attack was made on the inmates of the house of the Congress President and the house itself was set on fire, that there was a plan to murder the Congress President, that respondent No. 2 was involved in the making and execution of the said plan, that some Congress Goondas were sent in the guise of Sadhus to participate in the said plan, that these allegations were made in the presence and hearing of respondent No. 1, that at that time Mr. Madhu Limaye was the agent of respondent No. 1, that the said allegations were made with the consent of respondent No. 1 and in his interest, that they were utterly false and were known to be false both to respondent No. 1 and to Mr. Madhu Limaye, that neither of them believed the same to be true, that they materially affected the result of the election to the detriment of respondent No. 2 and to the benefit of respondent No. 1.

The contentions on behalf of respondent No. 1 are that Mr. Madhu Limaye in the course of his speech at the meeting at Chowpaty did not utter the words that are attributed to him in paragraph 2J(iv) of the petition. In the alternative, it

is submitted that if these words were uttered by Mr. Madhu Limaye in his speech, it is not established that on the day when this speech was made, respondent No. 2 was a candidate, that these words were not uttered by Mr. Madhu Limaye with the knowledge or consent of respondent No. 1, that Mr. Madhu Limaye was not the agent of respondent No. 1 and that it is not proved that the result of the election is materially affected by the speech of respondent No. 1.

With reference to the speech alleged to be made by Mr. Madhu Limaye on November 20, 1966 at Calcutta, no evidence is led except producing on record the report of a news item in the newspaper Indian Express dated November 21, 1966 (Ex. 73). This news item purports to be a report of a statement alleged to be made by Mr. Madhu Limaye while on his way to New Delhi by air after election talks with West Bengal Left leaders. This news item reports that Mr. Madhu Limaye is alleged to have stated that Mr. Atulya Ghosh used the Delhi anti-cow slaughter protest to remove Mr. Nanda from the cabinet, that he charged that a few days before the movement started, Mr. Ghosh and respondent No. 2 had given an ultimatum to Mr. Nanda that if he wished to stay on, he would have to drop the cases against Sunil Das and Tarapada Chakravarti who had been arrested for alleged espionage sometime ago. Mr. Madhu Limaye is alleged to have stated that big monopolists who had been gunning at Nanda for a long time also acted in collusion with a powerful faction of the Congress whose leadership was syndicated by Mr. Atulya Ghosh, respondent No. 2 and Mr. Reddy to remove Mr. Nanda, that he had never been a greater supporter of Mr. Nanda, that he would like to find out the reasons for his exit, that Mr. Nanda took up corruption cases and that infuriated his enemies, that many Goondas were hired in Calcutta and taken to New Delhi at the instance of the involved faction of the Congress. Apart from producing this report on record, no other evidence is brought on the record to establish the truth of the statements contained in this report. Such allegations cannot be held to be proved merely by production of the newspaper wherein the report appears. Simply by production of Ex. X.73, it is impossible to hold that Mr. Madhu Limaye made a statement as therein reported.

One of the contentions urged in the course of the argument was that even though in paragraph 2E of the petition it is pleaded "Earlier such allegations had been made by Shri Madhu Limaye who also contested the election to the Lok Sabha on the Samyukta Socialist Party ticket" it was pointed out that when the written statement was filed on behalf of respondent No. 1, this allegation is not denied. It is undoubtedly a lapse while drafting the written statement. It may as well be due to the fact that the time, place and the occasion for making the statements by Mr. Madhu Limaye were not pleaded. In the absence of such particulars it was, however, open to respondent No. 1 to plead a statement stating that he does not admit the correctness of the allegation. That he has not chosen to do. However, having regard to the nature of the trial of an election petition, a mere failure to deny an allegation cannot much assist the petitioner. The question whether a corrupt practice prescribed by section 123(4) of the Act can be held to be proved merely on the ground that no specific denial has been made by the returned candidate in his written statement in that behalf was considered by the Supreme Court in the case of *Dr. Jagjit Singh v. Giani Kartar Singh and others*, A.I.R. 1966 Supreme Court 773. It is pointed out that the onus to prove the essential ingredients of section 123(4) is on the petitioner and so, it would be for him to prove that the statement is false and that the other requirements of the section are satisfied. Having regard to the nature of the corrupt practice which is prescribed by section 123, the Supreme Court was not prepared to hold that the strict rule of pleadings prescribed by Order 8 Rule 5 of the Code of Civil Procedure can be blindly invoked in election proceedings of this type. This decision, therefore, shows that the absence of a denial in the initial written statement of respondent No. 1 does not assist the petitioner much. Even without a denial he has to establish all the ingredients of a corrupt practice under section 123(4). It may be pointed out that after the petition was allowed to be amended pursuant to order dated September 15, 1967 and paragraph 2J(iv) was introduced, respondent No. 1 has filed a further supplementary written statement denying these allegations so far as the speech made at a meeting at Chowpaty are concerned.

At this meeting, at Chowpaty the petitioner himself was not present. He said that somewhere on 8th or 9th January 1967, he learnt about the allegations made by Mr. Madhu Limaye at Chowpaty meeting from Ulhas Aras (Ex. 173). After the talk with Ulhas Aras, he did not make any effort to find out whether such a

speech of Mr. Madhu Limaye at Chowpaty meeting was reported in the newspaper Maratha or any other newspaper. He said that he knew that this particular speech was reported in newspaper Maratha, but he did not remember whether he read that report before or after the talk he had with Ulhas Aras. He admitted that he had not mentioned in the petition about this statement made by Mr. Madhu Limaye at Chowpaty. He said that he came across this speech of Mr. Madhu Limaye while he was going through the various issues of Maratha after the election petition was filed. He did not remember whether he took that particular issue of Maratha where the speech of Mr. Madhu Limaye was reported to his Counsel. His attention was then drawn to the report (Ex. Y-2) published in Maratha dated January 2, 1967 of this speech of Mr. Madhu Limaye and he had to admit that in this report, there was no reference to the particular speech of Mr. Madhu Limaye at Chowpaty containing the allegations now made. He was unable to point out any newspaper wherein a report of the statement of Mr. Madhu Limaye's speech at Chowpaty, implicating respondent No. 2 as having a hand in Delhi disturbances was published.

So far as the speech of Mr. Madhu Limaye at this meeting is concerned, the record in the case is very satisfactory. On behalf of the Police Department this meeting was covered by Ramesh Srivastav (Ex. 112) and he took down exhaustive notes in shorthand of the speech made by Mr. Madhu Limaye at this meeting. Ex. 113 is the report of this speech made by Srivastav. He has stated that it is his practice to take notes in shorthand of the speech of a speaker if he was present at the meeting during his speech and he prepared his report from such shorthand notes. He says that Ex. 113 is the correct record of the speech of Mr. Madhu Limaye. That report is made in Hindi. There is no cross-examination worth mentioning of this witness and the authenticity of the report made by him of the speech of Mr. Madhu Limaye is not challenged in cross-examination. At this meeting Mr. Madhu Limaye was sometimes speaking fast and sometimes speaking slow, but he did not find any difficulty in recording in shorthand what Mr. Madhu Limaye said at the meeting. The report that he made was not a verbatim report of the speech of Mr. Madhu Limaye, but it was a detailed report.

22nd January, 1968:

The reporter (Ex. 113) is covered by one Srivastav, a Hindi Reporter of the Special Branch, CID Bombay. The report shows that in the course of the speech Madhu Limaye referred to the riots that took place at Delhi on November 7, 1966. The extract from this report in connection with the riots at Delhi runs thus:—

"This Congress Party has become so much rotten. Even they are fighting so much amongst themselves that they are thinking of cutting each other's throat. I have been speaking since 16th November and I am anxious to show to you people that in relation to the ban on cow slaughter, whatever has taken place on 7th November 1966 in Delhi is that a device was contrived to kill the President of the Congress, the leader of the Congress. In Delhi the riot was engineered, some Goondas were sent there in the dress of Sadhus. In this behalf one report of the Special Branch of West Bengal was sent to the Government. A scheme was devised to set fire to the house of Kamraj and to kill him. The Home Ministry had received information about this story. Even then today our Chavan Saheb is sitting keeping silent. Indira Gandhi also has been sitting keeping silent. It is possible that I may have a copy of that report. If a report of this type has come, what is the real secret behind it? This shows then these Congresswalas—how much they have fallen down, how rotten the party has become. Are you going to vote for them? I am pained that you will give your vote to Patil Saheb. Will you people give your vote to him?...."

Then there is criticism of respondent No. 2 as a Food Minister and Railway Minister. But apart from this, there is no other reference in this report to the riots at Delhi on November 7, 1966 and the plot hatched to murder the Congress President. This report, therefore, does not support the case of the petitioner in respect of the allegation made in para 2J (iv) of the petition. Mr. Madhu Limaye has referred to a plan to murder the Congress President and sending of Goondas in the dress of Sadhus to Delhi, but the name of respondent No. 2 is not associated with this plan or the sending of Goondas to Delhi. Probably Mr. Madhu Limaye was referring to a plan alleged to be hatched in West Bengal as there is a reference to the report of the Special Branch in West Bengal.

Besides the evidence of Srivastav, the petitioner has led the evidence of two other witnesses Uhas Krishnarao Aras (Ex. 173) and Kalyanji Nanji Poladia (Ex. 174). Both these witnesses stated that they were present for some time at this meeting held at Chowpaty on January 8, 1967 as they had been there for a walk. According to Aras, Mr. Madhu Limaye criticised respondent No. 2. He said that when respondent No. 2 was a Food Minister, he did not go to villages and inspire the villagers to grow more food, that when respondent was a Railway Minister, there were many accidents in his regime, that respondent No. 2 sent Goondas in Delhi on November 7, 1966 when there were Sadhus riots, that the Goondas dressed themselves as Sadhus, that they attacked Congress President and burnt his house. He said that they were at this meeting for about 30 or 35 minutes and they left the meeting when Mr. Madhu Limaye was speaking at the meeting. Poladia also says that he remembered three principal points of the speech of Mr. Madhu Limaye about respondent No. 2. He says that when respondent No. 2 was the Food Minister, he did not go to villages to encourage agriculture but imported food from America, that the existing shortage of food was due to respondent No. 2 because when he was the Food Minister, he did not take such steps as would encourage to grow more food, that he is responsible for the present shortage in food grains, that when respondent No. 2 was the Railway Minister, there were many railway accidents, that such number of accidents had never taken place earlier, that he took no steps to prevent such railway accidents, that he did not resign though his resignation was asked for, that he was not moved by seeing the faces of persons, that on November 7, 1966, when there was agitation by Sadhus at Delhi, that agitation was not really by Sadhus, that respondent No. 2 sent from here persons who dressed themselves as Sadhus and they participated in the agitation, that such persons attacked the house of Kamraj and his house was burnt, that after setting fire to the house of Kamraj, their plan was to murder Kamraj but they did not succeed, that such deterioration had entered the Congress, that people were out to murder their leader; he posed a question to the audience will give you vote to such a party. Thus both Poladia and Aras refer to the same three principal points in the speech of Mr. Madhu Limaye, namely, performance of respondent No. 2 as a Food Minister, his performance as a Railway Minister and his participation in the plot to murder the Congress President and in sending persons in the guise of Sadhus to participate therein. Of course, Poladia narrated this in a more detailed manner than done by Aras.

This evidence of Aras and Poladia about Mr. Madhu Limaye having in his speech implicated that respondent No. 2 had a hand in the riots that took place at Delhi and in the plan to murder the Congress President and that he sent Goondas in the guise of Sadhus to participate therein is not corroborated by the report of Srivastav (Ex. 113). That report is a contemporaneous document taken by police reporter in shorthand. As the evidence of Srivastav shows he had no difficulty in following the speech of Mr. Madhu Limaye and in taking down the detailed notes. Though, this is not a verbatim report of the speech of Mr. Madhu Limaye, as Srivastav says, it is detailed report. In this report, there is a reference to murder the Congress President during the disturbances of November 7, 1966, but it does not state that Mr. Madhu Limaye alleged that respondent No. 2 had a hand in such a plan. This evidence of Poladia and Aras, when they say that Mr. Madhu Limaye in the course of his speech alleged that the agitation in Delhi on November 7, 1966 was not really by Sadhus, that such agitation was by persons who were sent in the dress of Sadhus by respondent No. 2, that these persons attacked the house of the Congress President and burnt it and their plan was to murder Kamraj cannot be accepted as true. They have either misunderstood the speech of Mr. Madhu Limaye or they are not at all telling the truth. Uhas Aras not being familiar with Hindi may misunderstand the speech of Mr. Madhu Limaye, but it is surprising how Poladia deposed about Mr. Madhu Limaye having implicated in his speech that respondent No. 2 had a hand in Delhi riots. He is M.A. of the Bombay University with Hindi as a special subject. Misunderstanding on his part of the speech of Mr. Madhu Limaye is not ordinarily likely to arise. This shows that these two witnesses have invented the story that Mr. Madhu Limaye in his speech said that respondent No. 2 had a hand in the riots that took place in Delhi and that he sent Goondas or persons in the guise of Sadhus to participate therein.

Respondent No. 1 has also given evidence about the contents of the speech of Mr. Madhu Limaye at this meeting. According to him, Mr. Madhu Limaye in his speech at this meeting referred to many of the issues that were referred to in Parliament in which certain ministers were involved, notably Mr. Subramaniam, Mr. Manubhai Shah and Finance Minister Mr. Sachin Chaudhary. He also referred to the rioting that took place in Delhi on November 7, 1966 and said that

the West Bengal Government had a report which had been prepared by its CID and which was conveyed to the Central Government. He posed a question as to why this report was suppressed. He even hinted that he might have a copy even produced. According to respondent No. 1 Mr. Madhu Limaye in his speech did not say that respondent No. 2 had a hand in the incident which took place in Delhi on November 7, 1966 and in particular arson committed in the house of the Congress President and injuries inflicted on the inmates of his house. So far as respondent No. 2 recollected, Mr. Madhu Limaye referred to a plot having been hatched in West Bengal by a section of the Congress to create riots in Delhi and to kill the Congress President; Mr. Madhu Limaye did not associate respondent No. 2's name with anything that happened in connection with the riots at Delhi; in the speech Mr. Madhu Limaye did not make any attack on the personal character of respondent No. 2. In his cross-examination, he said that he did not believe that respondent No. 2 had any hand in the Sadhus' riots that took place in Delhi on November 7, 1966; or that Congressmen from any part of the country were sent to Delhi in the garb of Sadhus to participate in the Delhi incidents; that Congress had sent any Goondas to participate in the Delhi disturbances; or that Congressmen had planned either to commit arson at the house of the Congress President or to murder him or that the Congress men had at all engineered Delhi riots. At this meeting at Chowpatty Mr. Madhu Limaye referred to a plot having been hatched in West Bengal by a faction of the Congress to create riots in Delhi, and to kill the Congress President. Mr. Madhu Limaye said that he had heard that riots in Delhi were engineered and some Goondas were sent in the garb of Sadhus, that the Congress Party had become so much rotten, that they were fighting so much amongst themselves that they were thinking of cutting each other's throat. Respondent No. 1 did not remember whether Mr. Madhu Limaye said in his speech from where Goondas were sent in the garb of Sadhus. Respondent No. 1 denied that Mr. Limaye in his speech at Chowpatty had elaborated his earlier accusation made in the month of November that Respondent No. 2 and Atulya Ghosh had a hand in sending Goondas to Delhi in the garb of Sadhus. Respondent No. 1 said that after referring to the Sadhus riots in Delhi and that the Congress had engineered them, Mr. Madhu Limaye posed a question to the audience "Are you going to vote for respondent No. 2?" This shows that the evidence of respondent No. 1 about the speech of Mr. Madhu Limaye at the meeting at Chowpatty is consistent with what is recorded by Srivastav in his report (Ex. 113).

In view of this evidence, the petitioner has failed to establish as pleaded by him in para 2-J(iv) of the petition that in the course of his speech, Mr. Madhu Limaye alleged that respondent No. 2 had a definite hand in the riots that took place in Delhi in early November 1966 or that respondent No. 2 was involved in the making or execution of a plan to murder the Congress President. The charge contained in this paragraph, is therefore, not proved. It is unnecessary to consider the other contentions urged on behalf of respondent No. 1 in connection with this charge of corrupt practice.

The third category of corrupt practice under section 123 (4) of the Act consists of the statements made by a person other than respondent No. 1. Such statements are not made or published in the immediate presence of respondent No. 1. This category consists of two sub-categories, viz., (1) the statements published by Atre in his Daily Newspaper Maratha from time to time and (2) the statements made by Jagadguru Shankaracharya of Puri Pith both at a Press Conference held in Bombay on February 16, 1967. The question then arises whether Atre by publishing various articles, news items, cartoons and/or editorials in the several issues of Maratha committed a corrupt practice within the meaning of section 123(4) of the Act.

This corrupt practice pleaded in a number of paragraphs in the petition. In para 2E, it is alleged that the newspaper Maratha was the vocal mouth-piece of Sampoorna Maharashtra Samiti, that it enjoyed wide circulation throughout Maharashtra and in particular the Bombay South Parliamentary Constituency, that scurrilous articles were published in the said newspaper against respondent No. 2, that the allegations made by Jagadguru Shankaracharya and Madhu Limaye were given wide publicity in Maratha. In para 2H it is alleged that on the eve of elections a totally false statement was given wide publicity particularly in the newspaper Maratha, an accredited organ and mouth-piece of Samiti which was backing up the first respondent to the effect that respondent No. 2 had paid Rs. 15 lakhs to Mr. Jack Sequiera and was instrumental in the frustration of the efforts of Maharashtrians to unite Goa with Maharashtra. In para 2-I of the petition, it is alleged that from time to time various news items and other information was

published in Maratha falsely associating the name of respondent No. 2 with Shiv Sena by describing it as "Sadashiv Sena." In para 2J of the Petition, it is alleged that false statements in relation to personal character and conduct of respondent No. 2 were published in the various issues of Maratha therein specified. Reference was made to 34 issues of Maratha and after Ex. E was permitted to be introduced pursuant to the order dated July 3, 1967, the various items and/or extracts that were relied upon were referred to therein. It is the case of the petitioner in this petition that the Daily newspaper Maratha and its Printer & Publisher P. K. Atre was the agent of Respondent No. 1, that the various publications therein were made in the interest of respondent No. 1 and with his consent, that the same have materially affected the result of the election to the detriment of respondent No. 2 and the benefit of respondent No. 1. As pointed out above, reference is made to about 34 issues of Maratha between December 12, 1966 and February 31, 1967 wherein false statements in relation to personal character and conduct of respondent No. 1 are alleged to have been published. In Ex. E to the petition, as originally introduced, reference was made to about 50 items of extracts from these 34 issues of Maratha as constituting the instances of corrupt practices under section 123 (4) of the Act. On September 15, 1967, Mr. Jethmalani on behalf of the Petitioner made an application for deletion of about 28 items or extracts from Ex. E, to the petition. There remained thereafter in Ex. E only 22 items or extracts from Maratha as constituting the instances of corrupt practices. At the trial, reference was made on behalf of the petitioner only to 19 extracts or items published in Maratha between December 12, 1966 and February, 20, 1967 as instances of corrupt practice relied upon. Even during the course of the trial at the stage of arguments, out of these 19 extracts, two items, viz., Ex. X-28 published in the issue of Maratha dated January 21, 1967 and Ex. X-30 published in the issue of Maratha dated February 3, 1967 were given up. There thus remained for consideration only the remaining 17 items or extracts from Maratha, as instances of corrupt practice under s. 123 (4) of the Act.

It is the case of the petitioner that Atre as the editor, publisher and the proprietor of Daily Maratha is the agent of Respondent No. 1 as that term is understood under the election law, that at the instance of or with the consent, knowledge, approval or connivance of respondent No. 1 and for his benefit, Maratha published various false and scurrilous writings, news items, cartoons and editorials in relation to personal character and conduct of respondent No. 2 from time to time, that respondent No. 1 and Atre believed what was stated in the said paper to be false or did not believe it to be true, that the said publications were reasonably calculated to prejudice the prospects of the election of respondent No. 2 and that the result of the election in so far as it concerned respondent No. 1, has been materially affected by reason of the said publications. On behalf of respondent No. 1 the correctness of each one of the above submissions and contentions is denied.

It is, therefore, necessary to consider what constitutes "Agency" as that term is understood in the election law. Explanation (1) to section 123 of the Act contains in interpretation of the expression "agent". It says: "In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate." This is an inclusive definition and not an exhaustive one. The question whether or not Atre was the agent of respondent No. 1—the returned candidate—must, therefore, be determined with reference to the use of the word "agent" as understood in the Law of Elections all these days. It is pointed out in Halsbury's Laws of England, Vol. 14 (3rd Edn.) Art 300 at p. 169:—

"A candidate's liability to have his election avoided under the doctrines of election agency is distinct from, and wider than, his liability under the criminal or civil law of agency. Once the agency is established a candidate is liable to have his election avoided for corrupt or illegal practices committed by his agents even though the act was not authorised by the candidate or was expressly forbidden. The reason for this stringent law is that candidates put forward agents to act for them; and if it were permitted that these agents should play foul, and that the candidate should have all the benefit of their foul play without being responsible for it in the way of losing his seat, great mischief would arise."

The question what would be sufficient evidence to constitute one person the agent of another under the Election Law is, as it has been pointed out again and

again, a question more of fact than of law. In the case of *Borough of Evesham* (1881) III O' M. & H. 192 Grove J. said:—

"I think it highly desirable that in election inquiries the law of principal and agent should be, as it is, rather one of facts than of distinct rules; for this reason, that when the judges have laid down a rule as to what constitutes agency, in the next election petition which they try they find that this rule has been evaded; therefore, it must always remain a mixed question of law and fact, though very much a question of fact, as to what constitutes agency".

It is pointed out more than once that a precise definition of "agency" under the election law is either possible or should be attempted. In the case of *Borough of Bridgewater*, (1870) I—O' M. & H. 112, Blackburn J. observed:

"It has never yet been distinctly and precisely defined what degree of evidence is required to establish such a relation between the sitting member and the person guilty of corruption, as should constitute agency. I do not pretend to be able to define it, certainly; no one yet has been able to go further than to say, as to some cases, enough has been established; as to other, enough has not been established to vacate the seat; this case is on the right side of the line, that is on the wrong; but the line itself has never yet been definitely drawn, and I profess myself unable accurately to draw it."

In the *Windsor's case* (1870) I—O.M. & H. p. 1, Willes J. said:—

"Authority to canvass—and I purposely used the word 'authority' and not 'employment' because I meant the observation to apply to persons authorised to canvass, whether paid or not for their services—would, in my opinion, constitute an agent and that authority for the general management of an election would involve authority to canvass."

However, any supporter of a candidate who chooses to ask others for their votes and to make speeches in his favour, can not force himself upon the candidate as an agent [per O'Brien J. in the *Londonderry Case*—(1870)] I—O' M. & H. 274 at p. 278. As to the question of agency, says Blackburn J. in the *Bewdley Case* (1870) I—O.M. & H. p. 16 at p. 17:

"No one can lay down a precise rule as to what would constitute evidence of being an agent. Every instance in which it is shown that, either with the knowledge of the member or candidate himself, or to the knowledge of his agents who had employment from him, a person acts at all in furthering the election for him, in trying to get votes for him, is evidence tending to show that the person so acting was authorised to act as his agent. It is by no means essential that it should be shown that a person so employed, in order to be an agent for the purpose, is paid in the slightest degree or is in the nature of being a paid person."

The same learned Judge in the *Taunton Case* (1870)—I—O' & M.H. 181/1 laid down the rule thus:—

"The rule of law has long been established that in parliamentary matters we are not to consider the strict rule of common law agency generally established to this extent that a person is responsible for his agent in all that he does within the scope of his authority, but is not responsible for anything that he does beyond the scope of his authority.....But in parliamentary election law it has long been established that where a person has employed an agent for the purpose of procuring his election, he, the candidate, is responsible for the act of that agent in committing corruption, though he himself not only did not intend it or authorise it, but even *bona fide* did his best to hinder it."

A little later he said:

"I think all one can do is this, to say that wherever a person is in any way allowed by a candidate or has the candidate's sanction to try to carry on his election and to act for him, that is some evidence to show that he is his agent."

In the *Taunton Case* (1875) II—O' M.H. 66 at p. 73, Grove J. laid down the law of agency thus:—

"The law of agency, as applied to election petitions, has been differently expressed by different learned Judges, some of whom have likened

it to the relation of master and servant, and another to the employer of persons to run a race for him; but no exact definition, meeting all cases, has, as far as I am aware, been given. Two learned Judges—the late Mr. Justice Willes and Mr. Justice Blackburn—have pointed out the difficulties of arriving at one. All agree that the relation is not the Common law one of principle and agent, but that the candidate may be responsible for the acts of one acting on his behalf, though the acts be beyond the scope of the authority given, or, indeed, in violation of express injunction. So far as regards the present case, I am of opinion that, to establish agency for which the candidate would be responsible, he must be proved by himself or by his authorised agent to have employed the persons whose conduct is impugned to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause with them for the purpose of promoting his election. . . . Mere non-interference with persons who, feeling interested in the success of the candidate, may act in support of his canvass, is not sufficient in my judgment, to saddle the candidate with any unlawful acts of theirs of which the tribunal is satisfied he or his authorised agent is ignorant.”

The same learned Judge said in the *Wakefield Case* (1875)—II O.M. & H. 100 at p. 103:—

“A candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object.”

These principles of English Law about the doctrine of ‘agency’ are generally applied in India, but while following these principles, the provisions of the statute as they existed today ought not to be overlooked. Prior to the amendment of the Act by the Central Act 27 of 1956 the definition of the word “agent” was found in clause (a) of section 79 of the Act as follows:—

“Agent” includes an election agent, a polling agent and a counting agent and any person who, on the trial of an election petition or of an offence with respect to any election is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate.”

Under this definition either knowledge or consent of the candidate is sufficient. There is some difference in the degree between mere knowledge of the candidate and his consent. By the Central Act No. 27 of 1966 the definition of the word given in cl.(2) of section 79 was deleted and it was defined as contained in Explanation (1) of s. 123 as hereinabove set out. It will be apparent from this definition that the word “knowledge” is deleted from the definition. Under the present law, “consent” is necessary in all cases for a person acting in connection with an election for a candidate to be held to be candidate’s agent and “knowledge” alone will not suffice. Of course, “Knowledge” with other circumstances, such as raising no objection on availing of the acts, may raise an inference of ‘consent’ but it must amount to consent.

In *Sudhir Laxman Bendre v. S. A. Dange & O’s*,—(1959) XVII Election Law Reports 373,—AIR 1960 Bombay 249, the Division Bench of this Court pointed out: Though the law of agency as applied to election petitions has been differently expressed by different Judges, all agree that the relation is not the common law one of principle and agent, but the candidate may be responsible for the acts of a person acting on his behalf, though such acts are beyond the scope of the authority given, or indeed in violation of express injunction.

The necessity of the consent of a candidate for constitution of agency is emphasised in the case of *Biswanath v. Haralal Das* A.I.R. 1958 Assam 97. It says that: In order to constitute the agency under s. 123 it is essential that a person must be proved to have acted as an agent in connection, with the election with the consent of the candidate. Reading s. 100 and s. 123 together, it will appear that if a person acts in connection with election as an agent with the consent of the candidate, he will be deemed to be an agent for the purposes of s. 123. The result will be that any publication done by such a person will constitute a corrupt practice. But before the petitioner could get any relief under Sec. 100, he is not only to prove that a corrupt practice has

been committed by any person; but it has been done with the consent of the returned candidate.

The case of *Maganlal Bagdi v. H. V. Kamath* AIR 1960 M.P. 362, illustrate how agency understood under the Election Law is established, by joint propaganda for the election. It says that where the election campaign, publicity and propaganda of a party's candidates for election to the State Assembly as well as to the House of the People are conducted conjointly, the Assembly candidates are in fact and law the agent of the candidates for the House of the People and *vice-versa*, within the meaning of section 123(4) of the Act.

The contention on behalf of the Petitioner is that a number of factors exists in the present case which go to show that Acharya Atre is the agent of respondent No. 1 as that term is understood under the election law; Admittedly respondent No. 1 is a prominent member of the Samyukta Socialist Party (hereinafter referred to as the "SSP"), that SSP is a constituent unit of Sampoorna Maharashtra Samiti (hereinafter referred to as the "SMS") that SMS was formed *inter alia* with a view to fight unitedly the Congress at the Election; that the candidature of respondent No. 1 from Bombay South Parliamentary Constituency was endorsed by SMS; that Atre was a prominent leader of SMS and the President of the Bombay Unit of the SMS; that Atre himself was a candidate for Parliament from some other constituency in Bombay; that both respondent No. 1 and Atre mutually addressed election meetings in each other's constituencies; that Atre through the columns of his newspaper Maratha carried on vigorous and intensive propaganda for election of candidates sponsored and/or supported by SMS including respondent No. 1; that after the result of election was announced, respondent No. 1 publicly as well as privately thanked Atre and his newspaper Maratha for having taken great pains for his success at the election. It is said that Atre had made common cause with respondent No. 1 for promoting his election, that to the knowledge of respondent No. 1 and for the purpose of promoting his election. Atre canvassed and did various things as tended to promote the election of respondent No. 1 and that respondent No. 1 had reasonable knowledge that Atre was so acting with that object. It is necessary to consider the various factors and circumstances that are relied upon as evidence of agency and see whether they establish that Atre is the agent of respondent No. 1 as that term is understood under the election law.

It is not disputed that respondent No. 1 belonged to S.S.P. and that his candidature was sponsored by S.S.P. In fact, it is the case of the petitioner in para 2E of the petition that respondent No. 1 contested the election from Bombay South Parliamentary Constituency on the SSP ticket. The evidence of respondent No. 1 that he was selected as a candidate for parliamentary seat by the SSP and that he contested on the ticket of SSP with its symbol the "tree" has not been challenged. The SSP was at the relevant time the constituent unit of the SMS.

There is some controversy between the parties in relation to the object with which the SMS was formed. It is the case of the petitioner that the united fight at the coming election in the year 1967 was one of the main objectives for the formation of the SMS right from its inception. The case of respondent No. 1 on the other hand, is that the SMS was formed only for uniting the border areas of Belgaum and Karwar with the existing State of Maharashtra. Reference can be had to the diverse factors relied upon by either side to substantiate their respective contentions.

There is clear evidence that in the earlier elections—in the year 1967 and in the year 1962—SSP was not a constituent unit of the Samyukta Maharashtra Samiti. Respondent No. 1 in his evidence says that in the year 1957 election, Socialist Party was a unit of Samyukta Maharashtra Samiti but on the eve of the election, the Samyukta Maharashtra Samiti came out with a programme of its Government if it was elected to power. At that stage, the Socialist Party came out of Samyukta Maharashtra Samiti because it did not want its own programme to be diluted. According to respondent No. 1, in 1957 Samyukta Maharashtra Samiti was more than a mere alliance and was a party for the purpose of the election and had a programme. The same thing continued up to the year 1962. Even then the Samyukta Maharashtra Samiti continued to be a party with the programme of its own. In the 1962 election, the Socialist Party did not join the Samiti. In 1967 election, with a view to throw out the Congress from power, the Socialist Party wanted to depart from its earlier policy and was prepared to enter into the alliance with any of the parties.

Reliance was placed on behalf of the petitioner upon a statement alleged to be made by Mr. Madhu Limaye, a report of which appears in the issue of

Maratha dated April 11, 1966 (Ex. X-66). This extract contains a report of the speech purported to be made by Mr. Madhu Limaye at Shivtirth. The report shows that Mr. Madhu Limaye is alleged to have stated that in the coming election opposition parties should unite and should have the allocation of seats and thus should deintoxicate the ruling Congress Party of their two-third majority; that the Congress is having 2/3 majority in this country and that majority intoxicated the Congress so much that this party was away from even ordinary humanism; that the only work left for the opposition parties was to reduce this majority; that, therefore, all the opposition parties must unite and should build up a great unity to reduce the Congress majority. The fact that such a speech was made by Mr. Madhu Limaye is not independently proved except by mere production of the issue of Maratha, wherein this report is to be found. The contents of the report are not proved by mere production of the report. By mere production of Ex. X-66, it is not possible to conclude that Mr. Madhu Limaye made a speech of the type reported therein.

Ex. X-67 is also a report of the speech reported to be made by Acharya Atre in the month of April 1966 while addressing pro-Maharashtra workers at Dadar. This report shows that Acharya Atre at this meeting stated that all the opposition parties should forget their differences, that there shall be only one opposition candidate against the Congress candidate, that he was going to request all the opposition parties in Maharashtra to fight the forthcoming elections with the only determination of defeating the Congress candidate by ensuring that votes are not divided in the opposition parties. At this meeting, Acharya Atre declared the formation of SMS and said that a conference of all the opposition parties should be convened in Bombay in next month. The report further shows that Acharya Atre said that the Congress Government cut into pieces the border areas while conceding Maharashtra State; that they must make great efforts in the forthcoming general election for creating Sampoorna Maharashtra and that Samiti is being inaugurated for this purpose only. That such a news item appeared in Acharya Atre's newspaper Maratha cannot be disputed and may be regarded an authentic report of what Acharya Atre must have said while addressing the pro-Maharashtra workers.

On May 26, 1966 a meeting of the various leaders of the opposition parties was held in the Office of Shiv Shakti—the place where Maratha is published and where Atre resides—, that about 200 persons representing various constituent parties, labour organisations and other organisations were present; at this meeting a decision to form SMS was arrived at by those present therein. A report of what transpired at this meeting is published in the issue of Kesari dated May 27, 1966 and the issue of Maratha of the same date. Ex. 182 is the report in Kesari and Ex. 183 is the report of the proceedings of this meeting in Maratha. These reports show that amongst the various leaders, respondent No. 1 was one of the leaders present at this meeting and they also show the object with which the SMS was formed. Ex. 182—the report in Kesari shows that it had been decided by the opposition leaders to continue the fight for the inclusion of Marathi speaking areas of Mysore in Maharashtra and that for this purpose Sampoorna Maharashtra Samiti had been formed. This meeting also appointed in *ad hoc* committee to start the work of SMS in Bombay. Amongst the persons, who were the members of the *ad hoc* committee were Mr. S. M. Joshi the President of the SSP and Acharya Atre. Ex. 183 is rather a more detailed report of the proceedings of this meeting. The object with which SMS was formed is reported even in Maratha in the same manner as it is also reported in Kesari Ex. 182 Ex. 183 *inter alia* contains a report that by unanimous votes of leaders of leading opposition parties at the meeting at Shiv Shakti office of Daily Maratha, a historic decision was taken to form the SMS in order to support and lead the mammoth and Maharashtra-wide agitation to merge Marathi border areas with Maharashtra; that before the next general elections these border areas should be merged with Maharashtra; that the meeting took unanimous decision that the one man commission that was appointed to go into the question of border areas was appointed with a view of simply deceiving the people of Maharashtra and the border area in the ensuing general elections and that border area would not get justice without united struggle. These reports Exs. 182 and 183 clearly point out the object of formation of SMS. At the time when it was formed, the sole objective was to carry forward the struggle of merger of border areas of Belgaum and Karwar into the existing State of Maharashtra. The announcement regarding the formation of SMS was published in the issue of Maratha dated May 27, 1966 (Ex. 186) and it also shows that leaders of the opposition parties decided to organise a united Maharashtrawide struggle and to form SMS to unite, widen and strengthen the agitation of the Marathi People on the border problem. That this is the sole object of formation of SMS is also clear from a box

item and the photos Ex. 51 published in the issue of Maratha dated May, 27 1966. This photo shows that amongst persons who participated in this decision of formation of SMS were amongst other respondent No. 1 and Acharya Atre. In none of these reports (Exs. 182, 183 or 186) is there a reference to be found to the decision of the opposition leaders that one of the object of the formation of SMS was to have a united fight against the Congress at the election. Acharya Atre however, seems to be keen to utilise this factor of formation of SMS for a united fight at the election and he gave expression to such views in the editorial that he published in the issue of Maratha, dated May 27, 1966. That editorial is Ex. 54. This editorial *inter alia* states that all opposition parties in Maharashtra have come together and have blown the battle horn unanimously from the rampart of Shiva Shakti of formation of SMS to destroy the Congress in the forthcoming elections. Such a statement on behalf of Atre in the editorial is not supported by the reports of the meeting published in the Exhs. 182-183 and 186. In fact, respondent No. 1 when he was shown this editorial Ex. X-54 stated that it is incorrect. He said that to his knowledge no such decision was taken in the meeting held at Shiva Shakti on May 26, 1966. At the best, this statement merely expresses the personal views of Acharya Atre. On May 29, 1966 a meeting was held at Shivaji Park to announce the formation of SMS. Ex. 53 is a report of what happened at this meeting. The heading of this report shows that SMS has blown the battle horn for the Boundary Battle. Dange and S. M. Joshi at the time of breaking the coconut said that the area on the boundary of Belgaum-Karwar must be amalgamated in Maharashtra and justice should be given to the people in the border areas; that if this justice was not given then the fight should be as fierce as the one fought for Samyukta Maharashtra in such a way that Congress is destroyed from Maharashtra; that SMS had been formed to fight the forthcoming battle fiercely and for this purpose five Pandavas had come together. The words "five Pandavas" in this report refer to the five of the constituent parties that would go to form SMS. Respondent No. 1 was present at this meeting, but Acharya Atre could not remain present as he met with an accident. In the issue of Maratha dated May 30, 1966 (Part of Ex. 53) the editorial is published wherein it is *inter alia* stated that if the Congress leaders in power at the Centre do not have the wisdom to include the Marathi border areas in Maharashtra before the next general elections, then the Sampoorna Maharashtra Samiti had sworn to destroy the Congress in the next general elections; that they may have differences of opinion on several other questions but they were of one mind on the question of Marathi border areas, hence they were determined to put up only one candidate against the Congress in each constituency in the general elections. This editorial no doubt refers to the personal view of Atre. If regard be had to the published reports of the proceedings of the meetings of the various parties and its leaders, it is undoubtedly clear that the parties and their leaders that met together on May 26, 1966 for formation of SMS did not apply their mind at that stage to the question of election. Their object of formation of SMS was to unite the border areas with the State of Maharashtra. However, both before as well as after the formation of SMS, Acharya Atre personally intended to utilise the formation of SMS for fighting election against Congress if the objective of merger of border areas with Maharashtra was not achieved. There are also some reports of meetings, press conference and of statements, which also go to show that at that stage SMS had not applied its mind to the question of elections. A meeting was held on June 19, 1966 at Shiv Shakti to carry on the struggle of merger of border area. Respondent No. 1 was present at this meeting. The report of this meeting was published in the issue of Maratha dated June 20, 1966 and it is Ex. X-91. According to respondent No. 1 this is the correct report of what transpired at this meeting. Those who met at this meeting took the view that one man commission may be appointed for Belgaum-Karwar but it was the opinion of all those who were present that this was again for killing time. The meeting decided to arrange conference at Poona in the middle of June to decide the programme of the border agitation and for this conference about five thousand representatives from Bombay would remain present; that in this conference the office bearers of the SMS would be elected and a scheme would be decided to appoint committees at various places. At this meeting, a temporary committee was formed to carry out the work of SMS at Bombay.

On June 29, 1966 at a press interview at Akola where he had been in connection with the question of recognition of S. T. Mazdoor Sabha, respondent No. 1 said that as far as SSP was concerned, they were prepared to have alliance with any party and they were having talks with other party leaders in that connection. He also said that so long as on the platform of SMS, Communist Party, Samyukta-

Socialist Party, Peasants' Workers Party and Hindu Mahasabha had come together and if all these parties were united, they would be able to meet the challenge of the Congress effectively. This statement shows that the idea of forming an alliance was merely in contemplation in order to present United Front against the Congress at the Election. Even a report of a statement made by Atre published in Maratha dated August 8, 1966 (Ex. X-43) also indicated the same thing. This report shows that if the SMS decided to contest the forthcoming general election and if the constituents of the Samiti nominated candidates unanimously for the said elections, there was no reason for anybody to doubt that Acharya Atre personally in the Daily Maratha would support only those candidates sponsored by SMS. The evidence of respondent No. 1 shows why such a statement came to be made by Acharya Atre. On an earlier occasion, Acharya Atre had announced his decision to support Dr. Mandlik a member of the PSP from the Khet Wadi Constituency. The PSP was not a constituent unit of the SMS. By this statement published in Ex. X-43 Atre wanted to clarify his position in case SMS decided to contest the forthcoming general elections. These exhibits indicate that the SSP was trying to have an electoral alliance with the other political parties, whether they were constituent units of SMS Unit or not? It is also clear from the statement of Acharya Atre published in Maratha Ex. X-43 that SMS as such by this time did not consider the question of fighting the elections unitedly.

A little later, the SMS appeared to have taken a decision to participate in the forthcoming elections to be held in 1967. There is however, no direct evidence about this decision at the initial stage except through the report published in the newspapers. No attempt, however, is made on behalf of the petitioner to prove the contents of most of these reports, Ex. X-95 a report in the issue of Maratha dated the September 11, 1966 states that the leaders of the SMS had taken a decision to contest all the Lok Sabha and Assembly seats from Maharashtra in the forthcoming election that at various places the workers and the local leaders have agreed to contest the election on Samiti tickets; that the Samiti leaders have decided to contest 300 Assembly seats and 40 Lok Sabha seats from Maharashtra. No attempt is, however, made to prove the truth of the statement published in this report. This report was shown to respondent No. 1 and he says that he was not aware of such a report nor of the facts therein stated. After reading this report he stated that there were a number of basic inaccuracies therein.

It appears that a meeting of the leaders of SMS was held at Poona and the report of the proceedings of this meeting was published in the issue of Maratha dated September 20, 1966 (Ex. X-92). The report contains the heading "Congress shall be completely defeated in the forthcoming election." The report says that the SMS at its meeting held at Poona for two days expressed its determination to defeat the Congress totally in the forthcoming elections and to expand the area of its agitation that in the resolution regarding the elections it was stated that those party candidates or independent who would fight the elections by giving main importance to the border problem between Maharashtra and Mysore would be supported by the Samiti; that the Samiti had decided to organise a proper machinery in order to see that the votes against the Congress are not divided and to make electoral understanding between various parties and the independent candidates and that the local committees were directed to awake people in order to see that the agitation met with a complete success and that the Congress is more and more defeated. Reference is also made in this report to the programme of the SMS. This report states that this machinery would do the work of explaining the people that the Samiti would give importance to control the price spiral, supply of food, eradication of unemployment, distribution of land and other public demands relating to democracy and freedom. There is no independent evidence to prove that this report is an inaccurate report of the proceedings of the meeting that took place. It was shown to respondent No. 1 and he merely said that he was not present at this meeting and he could not say whether it was correct or not.

In the issue of Maratha dated November 3, 1966 a notice under the purported signature of Appa Pendso, Executive President of the Bombay City SMS was published for the information of the aspiring candidates of the Samiti. That notice is Ex. K-99. This notice deals with the manner of making applications by candidates who sought the support of the SMS at the election. This notice points out that the jurisdiction of the Bombay Office of the SMS was limited and confined to the Bombay City only that the candidates desiring to contest only from the Bombay City should forward their applications to the Bombay City Samiti

and that thereafter such applications would be sent to the Central Committee for consideration; the aspirants from outside Bombay City should send their applications to General Secretary, SMS, Kesari Office Poona No. 2; that the applications of partywise candidates would be considered in the executive committee meeting to be held on the 8th, 9th, 10th and those of independent candidates would be considered after the applications of the candidates of the constituent parties were considered. The fact that such a notice is published cannot be disputed but there is no direct evidence to show that this notice was published as a result of a decision taken by the Bombay Unit of the SMS.

It appears as shown by the report in the issue of Maratha dated November 9, 1966 (part of Ex. 177) that a session of the constituent parties of the SMS met in the Office of Kesari to finalise the names and the constituencies of its candidates in the forthcoming general elections. There is no direct evidence to show that this report is a correct report. A couple of days thereafter on November 11, 1966 a report (Ex. X-93) is published in the issue of Kesari suggesting that there was a general unanimity on the question of candidates and seats. This report states that the meeting of the representatives of the constituent parties of the SMS which was in session for two days in the office of Kesari was adjourned to afford more time for coming to an understanding on the allocation of seats; that the meeting of the represented parties would be held again on the 16th and 17th of November and that in that meeting distribution of seats party-wise would be finalised. The report further indicates that the constituent parties had taken unanimous decision regarding allocation of seats of Vidhan Sabha in the districts of Sangli, Kolaba, Satara, Kolhapur, Sholapur, Jalgaon, Dhulia and Nagar; that the decision for the allocation of seats for the remaining districts of West Maharashtra, namely, Poona, Thana, Nasik and Ratnagiri and Greater Bombay and Marathwada would be taken in the meeting to be held on 16th and 17th of November of the Central Working Committee and that meeting would finalise the allocation of seats and to prepare the outline of the election propaganda. When the attention of respondent No. 1 was drawn to this report he merely said that he was not aware of it. It is rather surprising that a leader of the standing of respondent No. 1 should plead ignorance about the proceeding of the important meeting of the SMS in the matter of selecting candidates in the constituencies. It is, however, clearly established that on November 16, 1966 a meeting was held at Shiv Shakti in Bombay of the members of the Bombay branch of the SMS to consider the selection of candidates for the Lok Sabha and the Legislative Assembly from Bombay. Acharya Atre presided over this meeting and respondent No. 1 was present there. The proceedings of this meeting are reported in the issue of Maratha dated November 16, 1966 (Ex. X-94). At this meeting a unanimous decision was taken for selection of candidates for two seats out of five seats of the Lok Sabha in Greater Bombay and for candidates for 10 seats out of 28 seats in the Legislative Assembly. It further points out that the report of this meeting would be placed for consideration of the Central Maharashtra Samiti at its meeting to be held at Poona on November 17 and a final decision would be taken regarding all these candidates. In the issue of Maratha dated December 11, 1966 (part of Ex. 177) was published a list announcing Samiti's three Lok Sabha and 21 Vidhan Sabha candidates. Amongst the candidates who are mentioned, it is shown that respondent No. 1 is a candidate from Bombay South Parliamentary Constituency for Lok Sabha and that Acharya Atre is the candidate for Lok Sabha from Bombay Central Parliamentary Constituency. In the issue of Maratha dated December 25, 1966 (Part of Ex. 177) is published information stating that on that day the SMS would inaugurate its election propaganda by breaking the coconut at a meeting to be held at Shivaji Park. Accordingly the SMS inaugurated its election campaign in Bombay by breaking the coconut at a meeting held at Shivaji Park. Acharya Atre presided over the meeting and respondent No. 1 was present there. A photo of such inauguration of the campaign was published as a news item (Ex. X-42) in the issue of Maratha dated December 26, 1966. Thus, from the proved documents it is at least established that sometime prior to November 16, 1966, the SMS, decided to participate in the forthcoming election, that the Bombay Unit of the SMS met under the chairmanship of Acharya Atre, selected candidates for Parliament and Legislative Assembly seats from Bombay, that the candidature of respondent No. 1 as a candidate from Bombay South Parliamentary Constituency was endorsed by the Bombay Unit of the SMS, that the SMS inaugurated its election campaign in Bombay on December 25, 1966 at a meeting held under the chairmanship of Acharya Atre and in the presence of respondent No. 1. This shows that in any event at the relevant time, a clear decision was taken by the SMS to participate in the election with a view to present the United Front against the Congress at the election.

It is also clear from the evidence on record that the office of the Bombay Unit of the SMS was at Shiv Shakti, the place where Maratha was published and Acharya Atre used to reside, that the Bombay Unit of the SMS used the telephone of the newspaper Maratha at Shiv-Shakti, that these facilities were continued even after the SMS decided to participate in the election, that Acharya Atre was from the inception the President and of the Bombay Unit of the SMS and continued to be such President when the SMS decided to participate in the election.

The point arises for consideration is whether the SMS adopted any political programme for fighting the elections. Reliance is placed upon the publication of 16 points programme in the issue of Maratha dated February 11, 1967 (Ex. X-61) and the issue of Maratha dated February 20, 1967 (Ex. 185). This 16 points programme appears to be a charter of demands of the SMS. It was on the basis of this programme that the SMS decided to participate in the elections. With regard to this programme, respondent No. 1 said that in fact he was not aware of this programme of the Samiti. However, he has admitted that most of the 16 points he emphasised in the course of his election campaign. He wanted to suggest that at no meeting of the SMS it applied its mind to its election manifesto or programme. Respondent No. 1 said to the best of his knowledge, Samiti had never any occasion to discuss unitedly its main objective on any issue except the border areas. But that does not appear to be correct. In the issue of Kesari dated November 11, 1966 (Ex. X-93) it is *inter alia* reported that at its meeting to be held on 16th and 17th November, the Central Working Committee of the Samiti would prepare the out line of the election propaganda. A similar piece of information appears to have been reported in the issue of Maratha dated December 9, 1966 (Part of Ex. 177) wherein information about the various meetings of the SMS is published. This report *inter alia* states that the meeting of the Central body of the SMS would be held on December 15, 1966 in the Office of Kesari and would be continued on 16th. Amongst the items of the Agenda of the meeting, the first item is to decide about the minimum programme with a view to carry on campaign for the election. It may be that respondent No. 1 may not be present at the meeting when such minimum programme was considered, but as suggested by these reports (Ex. X-93 and 177) at one of its meetings, the SMS must have considered its minimum programme to be presented to the electorate for fighting the election. The report of the meeting published in Ex. X-92 also supports the same conclusion. It shows that this machinery would do the work of explaining the people that the Samiti will give importance to control the price spiral, supply of food, eradication of unemployment distribution of land and other public demands relating to democracy and freedom.

The SMS has from time to time issued public appeals for collection of funds. This fact is sought to be proved by the production of the various issues of Maratha wherein such appeals for funds were published. In the issue of Maratha dated August 9, 1966, an appeal for funds (Ex. X-97) was published. By this notice, an important directive for collection of funds was issued. This notice was undoubtedly published before the SMS decided to participate in the election. But even after the SMS decided to participate in the election, similar appeals for funds were issued and they are published in the issues of Maratha from time to time. Reference can be had to the appeals Exs. X-8 and X-24. These appeals are published in the issue of Maratha dated December 16, 24 and 28 and they show that Acharya Atre needed election fund of Rs. 5 lacs to defeat the Congress in the forthcoming elections. In response to such appeals, some funds were collected, but the amount so collected did not appear to be very large. A report Ex. X-40 in the issue of Maratha dated January 28, 1967 stated that by about January 25, 1967 a meagre sum of Rs. 8783-75 was collected. I am not concerned whether this figure is a correct figure or not. What I am primarily concerned with is that a public appeal for raising an election fund for the SMS was made and some contributions thereto were received from time to time. There is, however, no evidence on record that respondent No. 1 has contributed any amount to this fund or has received any direct help from this fund. It is, however, quite possible that this fund, meagre as it is, must have been utilised for the election campaign carried on by the SMS for the candidates supported by it and for its other activities.

The evidence of respondent No. 1 also shows the nature of the work that was done by the SMS in the matter of election. The SMS endorsed the candidature of candidates sponsored by the parties which were its constituents and of independent candidates who did or did not subscribe to its views, that it brought about an adjustment in the candidature of persons supported by it to avoid *inter se* conflict and to prevent division of votes of electors sympathizing

with the SMS. At the suggestion of the SMS, Mirajkar, a candidate of the Communist Party (Marxist) withdrew his candidature and extended the support to Krishna Menon, the independent candidate. So also Mr. Gighe, a candidate sponsored by the SSP withdrew his candidature for the Assembly Seat from the Mahim Constituency in order to support one Bhave who was the candidate sponsored by the Samiti. A report was published in the issue of Maratha dated October 25, 1966 (Ex. X-98) which states that the Working Committee of the SMS has issued an appeal for unity to all constituent parties and non-party individuals for the purpose of avoiding the division of peoples' votes to ensure people's clear verdict on the future of border areas and defeat the Congress at the ensuing general elections. As shown by the report Ex. X-99, the Samiti invited applications from independent candidates. The Samiti also announced the names of the candidates which were sponsored by it. It inaugurated its election campaign by a formal ceremony by holding a meeting at Shivaji Park and it carried on election propaganda for the candidates sponsored by the SMS including respondent No. 1.

A controversy is raised at the trial to the effect that the SMS is not a political party as properly so called, but is a mere front; that it has no constitution, no membership, no Election Symbol or tickets and no independent workers etc. It is unnecessary to decide whether the SMS can be regarded as political party as that term may be properly understood. What I have to consider in the present case is whether Atre is the agent of respondent No. 1. To decide this issue, the question whether the SMS is a political party or not is entirely irrelevant.

It is then necessary to consider the part played by Atre personally and through his newspaper Maratha for the election campaign of candidates sponsored and supported by the SMS and for respondent No. 1 in particular. Prior to June 9, 1966, every issue of Maratha on its front page carried the legend that it was the victorious mouthpiece of Samyukta Maharashtra. From and after June 9, 1966, Maratha on its front page carried the legend that it was the official organ or the mouthpiece of the SMS. Respondent No. 1 in his evidence stated that there is no resolution of any sort at any level at any time appointing Maratha as the Official organ or the mouthpiece of the SMS or accepting it as such. It struck rather odd to him that Acharya Atre should have called this newspaper as the spokesman of the SMS, in the absence of a decision to so consider that newspaper. Whether there was a decision or not, the fact, however, remains that on and after June 9, 1966 Maratha publicly made a claim by publishing the legend that it was the official organ or mouthpiece of the SMS.

23rd January, 1968.

Respondent No. 1 in his testimony has admitted the nature of the work that was done by Acharya Atre and the daily Maratha to support the SMS candidates including himself at the election. Acharya Atre through the columns of Maratha carried on campaign for the success of the candidates endorsed by the SMS, but he was unable to say whether he took great pains or not. Between December 1966 and February 21, 1967, generally or almost every day, Maratha published the list of meetings of the candidates of the SMS including respondent No. 1. This, however, did not include all the meetings that respondent No. 1 addressed. Sometimes it included several meetings which respondent No. 1 did not address nor was scheduled to address. Maratha almost daily reported the speeches of the various Samiti candidates or their supporters including respondent No. 1 at various election meetings and the reports of the various press interviews given by Samiti candidates or their supporters including respondent No. 1. Respondent No. 1 was not prepared to admit that during this period, Maratha carried on vigorous and incessant propaganda against the Congress in general and respondent No. 2 in particular. During this period, Maratha carried on generally propaganda against the Congress in Maharashtra. During this period, every day Maratha carried on propaganda against the Congress and in favour of Samiti candidates and substantial part of the newspaper was devoted to this propaganda. As shown by the report (Ex. X-65) in the issue of Maratha dated January 6, 1967, it published directions about the propaganda work to be carried on. As shown by the report (Ex. X-40) in the issue of Maratha dated January 28, 1967, it published information about the various election meetings that were to be held on different days in different parts of the city in various constituencies. As shown by Ex. 177, it published news about various activities of the SMS throughout the period preceding the polling day and a large part of the newspaper was devoted to such election propaganda as and when it gathered momentum. On the eve of the election when the election propaganda came to an end, Maratha published a report (Ex. X-103) in its issue dated February 20, 1967 which states that after challenging respondent No. 2 on August 9,

1966, respondent No. 1 entered into election battle, that from that speech to the last speech, respondent No. 1 spoke in 222 meetings; that in the morning, he used to have contact with the voters; that at noon for two hours, he used to do some organisational work and that in the afternoon from 3 p.m. to 2 a.m. at night daily, he used to make speeches; that such was his continuous programme for the last about 2-1/2 months. According to respondent No. 1, instead of 222 meetings mentioned in this report, he addressed about 400 to 500 election meetings between August 2, 1966 and February 12, 1967 and that his work for addressing meetings started at 5 p.m. instead of at 3 p.m. as reported in Ex.X-103. The rest of that report, according to respondent No. 2, was substantially correct. Respondent No. 1 has admitted in his evidence that as a politician, he was conscious of the power of the press and the force of the written words. He, however, added that it did make difference where the election meeting is held. If he addressed a meeting outside his constituency, he did not come in direct contact with the electorate. However, the report of his speech might be read by the electors in his constituency or might not be read. That depended upon the nature of the newspaper and its circulation. He did not entertain an expectation prior to December 1966 that any newspaper would support him in his election campaign. He knew that Acharya Atre and Maratha were carrying on campaign of candidates endorsed by the SMS including himself.

The evidence of respondent No. 1 also shows that he had social contact with Acharya Atre. According to him, Acharya Atre was a forceful orator and a very powerful Marathi writer. Initially he said that he had no social contact with him, but his subsequent evidence shows that as and when occasion arose, he used to visit him socially. He remembered to have gone and met Acharya Atre on or about June 19, 1966 when he (Acharya Atre) returned home from the hospital. This was a social call after his return from the hospital. He was asked whether he had called on Atre at Shivashakti office on August 13, 1966 which was his birthday. He first said that he was not sure. After his attention was drawn to a report published in the issue of Maratha dated August 14, 1966, he said that he remembered that he must have called on him on August 13, 1966 at Shivashakti office as that was the place where he lives. He did not recollect that in November 1966, Acharya Atre celebrated the 10th anniversary of publication of Maratha or that he called on him on that day. He, however, remembered that on January 23, 1967, he attended a meeting held in Shivashakti building to celebrate Netaji's Jayanti. At this meeting he gave a call to put up a statue of Netaji Subhash at Kala Ghoda. Initially he did not remember whether on February 24, 1967, he had been to the office at Shivashakti or that he was received by Acharya Atre or that he was garlanded by him. After his attention was drawn to the report (Ex. X-57) published in the issue of Maratha dated February 25, 1967, he remembered that he went to the office of Maratha on February 24, and that he was received and garlanded by Acharya Atre. He added that the purpose of this visit was to express his concern at Acharya Atre's defeat in the election rather than for thanking him. This evidence, therefore, shows that whenever an occasion arose, respondent No. 1 used to call socially on Acharya Atre.

The evidence on record also shows that during the election period, respondent No. 1 and Acharya Atre mutually canvassed for each other and addressed election meetings in the constituency of the other. On January 3, 1967, respondent No. 1 addressed an election meeting at Worli to support the candidature of Acharya Atre. Acharya Atre was present at this meeting, but he was not present at the time when respondent No. 1 addressed it. A report of this meeting and the substance of the speeches made by respondent No. 1 and Acharya Atre are published in the issue of Maratha dated January 3, 1967 (Ex. X-100). On February 4, 1967, an election meeting was organised by the SMS at Colaba to support the candidature of respondent No. 1. This meeting was addressed both by respondent No. 1 and Acharya Atre and photos were taken and published showing them together on the same platform at this meeting. Acharya Atre also addressed a meeting on February 9, 1967 at Girgaum, a part of the Bombay South Parliamentary constituency. Respondent No. 1 was not present at this meeting. However, Appa Pendso, an Assembly candidate of Janata Aghadi, a constituent unit of the SMS, was present thereat. This evidence shows that both respondent No. 1 and Acharya Atre mutually canvassed for each other in each other's constituency by addressing election meetings.

Acharya Atre started a special feature in his daily Maratha called "George Fernandes Election Front." In all, between December 3, 1966 and February 2, 1967, nine articles under this heading "George Fernandes Election Front" were published in Maratha on various dates. These articles are Ex. X-9 to X-14. The object of publishing these articles obviously was to carry on election propaganda for respondent No. 1. Though the petitioner in his evidence wanted to suggest

that these articles or at least the most of them were written by respondent No. 1, Mr. Jethmalani at the stage of arguments conceded that there is no evidence on record to establish the assertion of the petitioner that these articles are written by respondent No. 1. The fact, however, remains that such a special feature was started by Acharya Atre through his daily Maratha even before the SMS inaugurated its election campaign at Shivaji Park on December 25, 1966. This special feature was solely with the object of enhancing the election prospects of respondent No. 1.

The Bombay Labour Union, of which respondent No. 1 is the President, published a bulletin wherein an article written by Acharya Atre about what he called Sadashiv Sena together with his photo was published. Respondent No. 1 in his evidence has pleaded ignorance about the publication of this bulletin, but that appears to be highly unnatural. Respondent No. 1 must have known about the publication of such a bulletin and the type of the news therein published.

The last circumstance relied upon to support the contention of Acharya Atre being the agent of respondent No. 1 is that he (respondent No. 1) privately and publicly thanked Acharya Atre for the great pains that he took for his election success. Initially respondent No. 1 did not admit, as shown earlier, that he thanked Acharya Atre. However, Maratha in its issue dated February 25, 1967 published a report (Ex. X-57) announcing the visit of respondent No. 1 to Shivashakti and the celebration of his glorious victory by Acharya Atre by garlanding him. After his attention was drawn to this report (Ex. X-57), respondent No. 1 said that he was reminded that he went to the office of Maratha on February 24 and that he was received and garlanded by Acharya Atre. He also said that perhaps on that day he must have thanked Atre and Ma atha. According to him, the purpose of his visit to Shivashakti was to express his concern at his defeat in the election rather than for thanking him. He said that he did not thank him profusely because he was not aware of anything particular that he did for him. This evidence of respondent No. 1 shows that when he visited the Shivashakti office on February 24, he thanked Acharya Atre and Maratha and was garlanded.

Question then arises whether respondent No. 1 publicly thanked Acharya Atre and his daily Maratha for the assistance rendered and the propaganda carried on for his success at the election. The case of the petitioner is that such public thanks were expressed by respondent No. 1 for Acharya Atre and his newspaper Maratha at a public meeting held at Chowpaty on February 26, 1967 after the results of the election were announced. In connection with the proceedings of this meeting, both the petitioner as well as Chandrakant Desai, the reporter of the Free Press Journal, have given evidence. According to the petitioner, he was present at this meeting. At this meeting respondent No. 1 publicly thanked Acharya Atre and Maratha for having moved heaven and earth for his success at the election. A photograph taken during the time of this meeting was also published in the issue of Maratha dated February 28, 1967. In his cross-examination he said that he was at this meeting for about an hour and a half and he left this meeting after the speech of respondent No. 1 was over. He did not know who presided over this meeting. He said that S. M. Joshi, the President of the SSP, spoke at this meeting, but he did not remember how long he spoke and what he said at this meeting. According to him, he remembered that respondent No. 1 publicly thanked Acharya Atre and newspaper Maratha for having moved heaven and earth for his success and he (respondent No. 1) said that but for his help, he could not have succeeded at the election; that the Congress was responsible for corruption in younger generation; but he with the co-operation of younger generation would be able to end the Congress rule and wipe out the corruption. It is rather surprising that the petitioner is unable to say a word of what Mr. S. M. Joshi said at this meeting, but he claims to remember the expression of thanks by respondent No. 1 for Acharya Atre and his daily Maratha.

Chandrakant Desai, the reporter of Free Press Journal, covered this meeting on behalf of his newspaper. According to him, respondent No. 1 in his speech thanked the voters for electing him and other candidates sponsored by the Samiti and promised to solve the problems of the people of Bombay. According to him, he said that his election to Lok Sabha was the people's victory. He thanked the audience and the workers who helped him at the election and P. K. Atre, the Chairman of the SMS and his paper. He, however, regretted that Atre was not successful at the election. He said that Atre and Maratha had worked very hard for the success of the Samiti and for his own election and he was, therefore,

thankful to them. In his cross-examination he said that after covering this meeting, he submitted his report to the Chief Reporter. In his report of the speech of respondent No. 1, he referred to the city water problem and the other problems of the city. He mentioned in his report that respondent No. 1 stated that he would pay more attention to the problems facing the city; that if people are united, they could defeat the strongest man. He then added that he did not remember exactly what else he reported of the speech of respondent No. 1 at the meeting. At the time when he gave evidence, he admitted that he had merely a rough idea of what respondent No. 1 said at the meeting. He did not remember exactly what he stated at the meeting. He added that in the concluding portion of his speech, he stated that if people were united, they can throw out the Congress, that he thanked the members of the Samiti, Acharya Atre and the newspaper Maratha and said that his victory at the election was due to the co-operation of the workers, Acharya Atre and others. As regards the concluding portion of the speech of respondent No. 1, he said that he had mentioned it in the report that he submitted to the Chief Reporter, but it was cut off by the Chief Reporter. He admitted that he gave evidence about the concluding portion of the speech of respondent No. 1 only from his memory and that except for his bare word, he had no written record to show that respondent No. 1 in his speech thanked Acharya Atre and Maratha.

Respondent No. 1 has also given evidence in connection with his speech at this meeting. He said that this meeting was held to felicitate him as a successful candidate at the election and was called under the auspices of the SSP. In his speech he congratulated the voters of South Bombay for defeating respondent No. 2 and thanked them for electing him. He spoke of the problems facing the city viz., water and housing, referred to the forthcoming municipal elections and said that they should carry out the fight to defeat the Congress at the time of municipal elections also. He expressed his concern at the failure of the Returning Officer to give a re-count at the instance of H. R. Gokhale. He expressed his regret at the defeat of Krishna Menon and Acharya Atre. He pledged to serve his electors and his country. He denied that at this meeting, he thanked Acharya Atre or his newspaper Maratha for his success or for having moved heaven and earth for his success. He denied having stated at this meeting that Acharya Atre and Maratha had worked very hard for the success of the SMS and for his election or he was, therefore, thankful to them. In cross-examination he said that he was quite certain that no mention was made of Acharya Atre or Maratha except for expressing his concern for the defeat of Atre at the election. He deposed to what he said about Atre at the meetings that the presence of Atre in Lok Sabha would have been a matter of strength to the opposition; that Atre roars like a lion; that whenever Atre speaks either in the Assembly or anywhere else, he only roars but does not speak. He expressed his concern at this meeting for the failure of all the opposition candidates, Acharya Atre, and Gokhale and others.

Ordinarily, respondent No. 1 being an interested witness, the Court will be slow to accept his testimony in the absence of corroboration. The fact that in the course of his speech, he did not thank Acharya Atre and/or Maratha is corroborated by the reports of his speech published in newspapers. There is not a single newspaper including even Maratha wherein the report of respondent No. 1 having at this meeting thanked Acharya Atre or Maratha is published. The proceedings of this meeting are reported in the issue of Maratha dated February 27, 1967 (Ex. 192). The report (Ex. 192) runs as under:—

"Acharya Atre's going to Parliament was practically more important. We cannot plead the people's side and cannot roar like a lion as Acharya can. We feel sorry for his defeat. But our strength has been doubled as Acharya does not feel for his defeat because others of his ideology are victorious. There was a grand roar of victory when Shri George Fernandes expressed these words of sentiment."

This report, no doubt, shows that both respondent No. 1 and Atre considered that they were involved in a common cause during the election. But it does not support the petitioner's case that during the course of his speech respondent No. 1 thanked Acharya Atre and/or Maratha for having moved heaven and earth or the evidence of Chandrakant Desai that respondent No. 1 thanked Acharya Atre or his newspaper Maratha for working very hard for his success. If such thanks were expressed by respondent No. 1 at the meeting, it is very unlikely that a paper like Maratha, having regard to the policy that it followed would have omitted to make a mention thereof.

Just a day before this meeting was held, respondent No. 1 had publicly issued a message of thanks and that message is reported in the issue of Maratha dated February 25, 1967 (Ex. 61). The report shows that respondent No. 1 issued a statement expressing his grateful thanks to the voters of the constituency. He said, "My victory is not my personal victory. It is the victory of the voters of South Bombay. I have no adequate words to express my gratitude for my voters. To all those workers who worked hard day and night and gave their sweat and blood for three months. I am deeply indebted. At this moment of victory I assure the voters in all humility that I shall do my best to be worthy of the trust they have reposed in me." In this message of thanks respondent No. 1 has thanked the voters who elected him and the workers who worked for him at the election. If respondent No. 1 had a special urge to thank Acharya Atré or his newspaper Maratha, as is now sought to be suggested, then he would not have omitted to mention their names while issuing this message of thanks in Ex. 61.

On the evidence of Chandrakant Desai, I do not consider it safe to hold that such thanks were expressed by respondent No. 1 for Acharya Atré or Maratha. Chandrakant Desai admits that except for his bare word, there is nothing to support his testimony that such thanks were expressed by respondent No. 1. Even in the report of the speech of respondent No. 1 published in Free Press Journal there is no mention of such thanks having been expressed by respondent No. 1. This omission is sought to be explained by saying that he incorporated this part of the speech in the report that he made, but it was deleted by the Chief Reporter while sending it to the Press for publication. Apart from his bare word, there is no other evidence to support this story of deletion. This story of deletion also appears to be inconsistent with the salutary policy of a newspaper in publishing reports. At the outset in his evidence, Chandrakant Desai said that whenever assignments were given to him by the Chief Reporter, he covered those meetings and submitted his reports to the Chief Reporter; that such reports generally always found their place in the newspaper; that he used the word 'generally' because if the Chief Reporter felt that there was some mistake or some doubt, then he held up such reports; that if the Chief Reporter felt that the statements made at public meeting were defamatory or its publication in the newspaper would land it in trouble or if the matter was *sub judice*, he did not publish such a report in the newspaper. If this was the policy that was followed for publication of reports in Free Press Journal, there is no good reason suggested why the Chief Reporter should have deleted from the report made by Chandrakant Desai an ordinary message of thanks expressed by respondent No. 1 for Acharya Atré or his newspaper Maratha. The policy deposed to by Chandrakant Desai does not warrant deletion of such a message from the report. Further, Chandrakant Desai rightly admitted that he did not remember exactly what respondent No. 1 stated at the meeting and he had merely rough idea of what he stated. If this is the correct position, it is difficult to understand how he remembered about this expression of thanks by respondent No. 1. A reporter of a newspaper, having regard to the duties that he has to discharge, has to cover a number of public meetings, press interviews, functions etc. Ordinarily, from their mere memory, it will not be very easy for them to remember what a speaker at a particular meeting said or spoke, unless their memory is refreshed by the reports made by them and published in the newspaper. In the present case, the report published in the Free Press Journal does not contain any report of such expression of thanks by respondent No. 1 and it is difficult to understand how without his memory being refreshed, he remembered about this expression of thanks. Lastly, it may be remembered that Chandrakant Desai was at one time a sincere Congress worker. He was a volunteer in the Congress Seva Dal from 1947 to 1952 and was the Secretary of the Girgaum Taluka Congress Committee for about six months in the year 1954. In view of these circumstances, I am not inclined to hold on his testimony that in the course of his speech, respondent No. 1 expressed thanks for Acharya Atré and his newspaper Maratha.

In view of these infirmities in the testimony of the petitioner and Chandrakant Desai and in the absence of a report in any newspaper about such message of thanks, I am not prepared to hold that at this meeting held at Chowpaty, respondent No. 1 publicly thanked Acharya Atré and/or his newspaper Maratha for having rendered assistance to him at the election.

To support the contention that respondent No. 1 thanked publicly Acharya Atré and Maratha at this meeting at Chowpaty, reliance was also placed upon a message of thanks published in the issue of Patriot dated February 25, 1967. Patriot is a Leftist paper. It specially started its Bombay edition only during the election period to carry on election campaign in support of the opposition

candidates. In the issue of Patriot dated February 25, 1967, a message of thanks with the photo of respondent No. 1 was published. That is Ex. X-53. It *inter alia* states that respondent No. 1 thanked Patriot for the great role it played at a time when no newspaper in the city except for a couple of language newspapers would take up the people's cause. When this message of thanks (Ex. X-53) was shown to respondent No. 1 while he was in the witness box, he denied having given such a message. He even went to the extent of suggesting that a message is a fabricated one. He was, however, asked by Mr. Jethmalani to make enquiries how such a message came to be published in Patriot. Later on Mr. Jethmalani did not consider it necessary to pursue this enquiry further. In re-examination respondent No. 1 said that after making enquiries, he learnt that the message of thanks was published in Patriot dated February 25, 1967 because the reporter of that paper approached his office and someone from his office had given that message. This evidence, therefore, explains how the message of thanks (Ex. X-53) came to be published. Simply because it contains a reference to a couple of language newspapers taking up the people's cause, it cannot be inferred that at the meeting at Chowpaty held on February 26, 1967, respondent No. 1 publicly thanked Acharya Atre and/or his newspaper Maratha for the great pains that they took for his success at the election.

To sum up, it is clear from the above discussion that respondent No. 1 is a prominent member of the SSP, that the SSP is a constituent unit of the SMS, that both Acharya Atre and respondent No. 1 participated in the formation of the SMS, that they both participated in the inauguration of the election campaign by the SMS, that the SMS carried on election propaganda for candidates supported by it including respondent No. 1, that Acharya Atre was the President of the Bombay Unit of the SMS and was a prominent and a leading member thereof that each of them addressed a meeting in its constituency of the other to carry on election propaganda for the other, that Acharya Atre through the columns of his newspaper Maratha carried on intensive and vigorous campaign for success of candidates supported by the SMS including respondent No. 1 that Acharya Atre started a special feature in Maratha under the heading "George Fernandes Election Front." These factors amongst others show that Acharya Atre had authority to canvass for respondent No. 1 that he made a common cause with respondent No. 1 for promoting his election, that to the knowledge of respondent No. 1 for the purpose of promoting his election, he (Atre) canvassed and did various things as tended to promote his election. This in law is sufficient to make Acharya Atre an agent of respondent No. 1 as that term is understood under the election law.

It was, however, argued on behalf of respondent No. 1 that the candidature of respondent No. 1 was selected by the SSP, that respondent No. 1 did not contribute to the election fund of the SMS or took or received any direct help therefrom, that respondent No. 1 was not a member of any committee of the SMS at any level or its office bearer and that he was in sole charge of his election campaign. The existence of these factors, in my opinion, do not prevent Acharya Atre becoming the agent of respondent No. 1. It is not necessary in order to establish agency that Acharya Atre should be actually employed or appointed by respondent No. 1. The test always is whether there has been authorisation of Acharya Atre by respondent No. 1 to do election work for him. The factors above summed up do go to show that Acharya was to authorised to do election work for respondent No. 1.

The contention then was that there was traditional political hostility between Atre on the one hand and the Congress and its leaders including respondent No. 2 on the other, that the campaign, if there be any, in the issue of Maratha against respondent No. 2 was due to such political hostility rather than for enhancing the prospects of election of respondent No. 1.

Respondent No. 2 in his deposition said that Maratha and Blitz always published news against the Congress and its leaders even when the elections are not to be held, that they do not publish news against all Congress leaders but they do against some of them, that there are some selected Congress leaders these newspapers do not attack, that apart from the election period, Blitz never attacked him, that he did not know whether Maratha was habitually attacking him, but that during the election period it attacked him that he did not know whether since 1957 Maratha was attacking him on the question of Samyukta Maharashtra. He said that he used to feel that it was the business of such newspapers to abuse him and the Congress, that he felt that character assassination not only of his but also of others was their usual job.

Respondent No. 1 also said in his evidence that Maratha used to publish spicy materials in which there was no substance, that it used to publish distorted statements or versions, but he would not call them lies, that Blitz also carried sensational stories, sometimes it published stories which are not true and subsequently apologised. According to him, the newspapers Maratha, Blitz, Patriot and Link were generally against respondent No. 2 for the last many years that there was a tendency with such papers to put everything against respondent No. 2 where he might have said something against the Congress and this he had found especially in the context of his election, that both in the 1957 and 1962 elections, Maratha campaigned vigorously for the candidates of the Samyukta Maharashtra Samiti against respondent No. 2, but he was not aware of the nature of the propaganda carried on by Maratha in 1967 and 1962 elections and he could not say whether any false statements in relation to the personal character or conduct of respondent No. 2 were published at those elections.

In view of this evidence, there would be some force in the contention of Acharya Atre had made mere propaganda against the Congress and its leaders including respondent No. 2. Acharya Atre, however, has gone much further. He made a common cause with respondent No. 1 to support him at the election. They both addressed meetings jointly on the same platform they carried on propaganda for each other in their respective constituencies, Acharya Atre started a distinct feature under the heading "George Fernandes Election Front." The existence of these factors amongst others above enumerated are sufficient to make Acharya Atre the agent of respondent No. 1 in spite of traditional hostility between Atre on the one hand and the Congress and its leaders including respondent No. 2 on the other.

Coming to specific publications in Maratha, 17 items are relied upon finally during the arguments and these items are published from time to time between December 12, 1966 and February 20, 1967.

The first publication referred to is a cartoon (Ex. X-27) published in the issue of Maratha dated January 18, 1967. This cartoon is headed 'Capitalism' and below the cartoon is written, "Mr. Sadoba Patil who boasts of Socialism has announced that he would collect a crore of rupees as Election Fund from capitalists." This cartoon is divided into two parts. In the north-west corner of this cartoon respondent No. 1 is shown as speaking to a capitalist with his finger pointed. He is telling the capitalist, "Remember, you have to contribute Rs. 10 lacs." On hearing these words the capitalist is shown frightened with his mouth open and behind respondent No. 1 is shown another capitalist whose turban is shown to have flown away from his head on hearing these words. In the other part of this cartoon is shown respondent No. 1 receiving smilingly bags of money from several capitalists. The capitalists are shown smiling with bags of money in their hands and the figures on the bags indicate lacs of rupees or crores of rupees. Respondent No. 1 is shown as uttering, he would collect a crore of rupees from these capitalists.

The contention on behalf of the petitioner is that there is an insinuation or an innuendo in this cartoon that money is collected by a method other than healthy persuasion, that respondent No. 2 by reason of the political power that the wielded intimidated the capitalists into parting with moneys against their wishes, that this amounts to extortion and intimidation, that there is thus abuse of power involving an element of moral turpitude. It is submitted that fanciful interpretation of such cartoon or other offensive writings by the returned candidate is wholly irrelevant. The test is, how will an ordinary reader of the newspaper wherein the cartoon is published interpret it.

The contention of respondent No. 1, on the other hand, is that the interpretation put on this cartoon on behalf of the petitioner and respondent No. 2 is not correct, that the pointed finger of respondent No. 2 in the cartoon does not indicate the bayonet, that the capitalist is shown as shocked or frightened not by the finger used as bayonet but by the demand made by respondent No. 2, "Remember, you have to contribute Rs. 10 lacs", that there is no impression or feeling of fright to be seen on the face of the capitalists when they are shown handing over bags containing lacs of rupees to respondent No. 2, that the inference suggested on behalf of the petitioner of the cartoon is not correct, that this cartoon is a criticism of the practice of respondent No. 2 in professing socialism and at the same time having a contact with capitalists, that the cartoon is merely an expression of opinion and not a publication of a statement of fact, that is a public criticism of the interview that respondent No. 2 gave at New Delhi on January 15, 1967 and in

the course of which he stated that he would collect a crore of rupees for the election fund of the Congress.

There can be no doubt that the occasion to publish this cartoon (Ex. X-27) was as a result of the report of the press interview given by respondent No. 2 which was published in the issue of Times of India dated January 16, 1967 (Ex. 147). One of the question put to respondent No. 2 at this interview was, from where does the Congress get its money and the reply of respondent No. 2 is: "The Congress gets its money from the industrialists. I shall collect Rupees, one crore for the party. There is nothing underhand in this. We have a law about this. Everything is above board. The Swatantra, PSP, Jan Sangh, all get money from the industrialists. There is nothing wrong in that." It cannot be disputed that it is this report that has furnished an occasion for publication of the cartoon (Ex. X-27) and that is why the cartoon contains the caption that Mr. Sadoba Patil who boasts of socialism has announced that he would collect a crore of rupees as election fund from capitalists.

Respondent No. 2 said in his evidence that this cartoon (Ex. X-27) suggests that he used coercion and threat to collect money, that in one part of this cartoon, he is depicted as demanding 10 lacs of rupees and he is shown as showing his finger meaning thereby that he was showing a bayonet, that in the other part of the cartoon he is shown as collecting heaps of money by adopting this method, that below this cartoon it is stated that in the name of socialism he was collecting a crore of rupees, that he did not use coercion or threats to collect funds for election campaign. There is no cross-examination of respondent No. 2 on the construction put by him on the cartoon. He was only asked questions about the amount collected by him for the election fund of the Congress. He said that he did not remember how much amount was collected for the Congress fund, but he would not be surprised if as a result of his writing letter to various businessmen and industrialists, over a crore of rupees were contributed to the Congress election fund.

The case of respondent No. 1 in his evidence is that he saw this cartoon for the first time after the election petition was filed, but he does not believe that respondent No. 2 collected the election funds by threat or coercion.

The interpretation put by respondent No. 2 on this cartoon is not challenged in his evidence. If the finger was not pointed by respondent No. 2 and merely a demand for Rs. 10 lacs was made for contribution to election fund, there would have been some justification for the contention now sought to be raised on behalf of respondent No. 1. The showing of the finger is to depict the use of a weapon like a bayonet. This is with a view to show either some intimidation or an element of extortion. The occasion for publishing a cartoon, no doubt, is a criticism of a public statement made by respondent No. 2. But the criticism by the cartoon goes much beyond fair legitimate criticism permitted or allowed by law. The idea of extortion or intimidation is implicit in the cartoon and inspite of this element, the impression on the face of the capitalists shown to be giving lacs of rupees is that of happiness. The cartoon wants to convey an idea that the method adopted for collecting the amount is not mere persuasion but goes beyond that. It contains an element of coercion or intimidation. The cartoon contains a false insinuation in respect of the personal character and conduct of respondent No. 2 and oversteps the limit of public criticism justified by law.

The next item of publication relied upon is a news item published in the issue of Maratha dated January 25, 1967 (Ex. X-20). This issue of Maratha contains the headline on its front page running across its entire page that there is evidence to show that Sadoba Patil is an enemy of Maharashtra. This headline is in very bold type. Below this headline there is another headline in a little smaller type covering three columns and it states that the protagonists of centrally administered Goa are bribed in the sum of lacs of rupees. The material part of the news item states:—

"It is reliably learnt that the defeat of the Maharashtrawadi Gomantak Party was due to the bribing of the supporters of the United Goans Party by Sadoba Patil, the Minister of Accidents, through his agents in the sum of lacs of rupees."

As the supporters of the U. G. Party could triumph only because of Sadoba's financial inducement, and now being intoxicated by this victory they have started committing acts of violence in Goa.

Sadoba had invited Jack Sequeira to the all India Congress Committee session held in Bombay in last May. All further politics was cooked in that meeting of theirs. At that time Jack Sequeira took a pledge to work against Maharashtra with the help of Sadoba. The sum of Rs. 15 lacs paid by Sadoba to Jack Sequeira were paid positively to obtain the votes of the Goans in Dhobi Talao, Chira Bazar areas of Bombay."

During the trial Mr. Jethmalani stated that the last sentence in Ex. X-20 is not relied upon as an instance of a corrupt practice for the purpose of this petition and that the petitioner is not relying on any corrupt practice of bribery or undue influence.

Respondent No. 2 in his evidence stated that the entire news item (Ex. X-20) is in relation to his personal character. He said that the statements in this news item—It is reliably learnt that the defeat of the Maharashtrawadi Gomantak Party was due to the bribing of the supporters of the United Goans Party by Sadoba Patil, the Minister of Accidents, through his agents in the sum of lacs of rupees; Sadoba had invited Jack Sequeira to the All India Congress session held in Bombay in last May; all further politics was cooked in that meeting of theirs; at that time Jack Sequeira took a pledge to work against Maharashtra with the help of Sadoba—are false statements. He said that he did not provide Rs. 15 lacs or any other sum to Jack Sequeira for the purpose alleged in this news item or for any other purpose; that he never provided any funds to Jack Sequeira at any time in his life; that he did not provide even a penny either directly or indirectly or personally or through anyone to the supporters of the United Goans Party; that he did not know whether Jack Sequeira came to the A. I. C. C session that he had no meeting with Jack Sequeira at all. He also said that the heading of this news item that he is an enemy of Maharashtra is totally false and outrageous.

The contention on behalf of next respondent No. 1 is that this news item merely contains an expression of opinion and is not a publication of a statement of fact because it starts with the words "It is reliably learnt that...." and that there is no evidence that such information was not received by Acharya Atre. The further contention is that the phrase "the bribing of the supporters of the United Goans Party" merely connotes the financial help given, that a supporter is never bribed and he is merely given money to carry on the propaganda. It was submitted that when an article is susceptible of two interpretations, then the established canon of construction requires that the interpretation favourable to the returned candidate must be adopted.

It is true that when the effect of an article is argued in the cold atmosphere of a judicial chamber, some allowance has to be made and the impugned article has to be construed having regard to the fact that during the election period, the atmosphere is usually surcharged with partisan feelings and emotions. The Court has to consider what effect such an article will have on the mind of the ordinary elector who reads such an article. The phrase "It is reliably learnt" is a method of conveying one's views. The use of the words "bribing of the supporters" clearly indicates that the means adopted were not fair. Bribery is always associated with corrupt means with a view to induce somebody to do a thing which otherwise he will not do. There can be no doubt on the evidence of respondent No. 2 that the various statements enumerated above are false statements. In fact no attempt has been made to justify the truth of those allegations and these statements reflect upon the personal character of respondent No. 2.

Then there is a group of three publications published at different times in the issue of Maratha suggesting that Shiv Sena is the creation of respondent No. 2. These publications are: a news item (Ex. X-29) published in the issue of Maratha dated January 30, 1967, a cartoon (Ex. X-22) published in the issue of Maratha dated February 5, 1967 and a news item (Ex. X-21) published in the issue of Maratha dated February 8, 1967.

In Ex. X-29 a news item is published with the heading "Get ready to face Sadashiv Sena" and in this news item there is a reference to the Goondagiri of Shiv Sena. The use of the words "Sadashiv Sena" contains an innuendo that Shiv Sena is a creation of respondent No. 2 whose name is Sadashiv. The cartoon (Ex.-22) is published with a heading 'I have nothing to do with Shiv Sena.... Sadoba. The idea of this cartoon appears to have been taken from what is popularly called Vishwamitra-Menka episode. In this cartoon Bal Thakaray, the leader of Shiv Sena, is depicted as a woman holding a baby in his hand named Shiv Sena and pointing the baby to respondent No. 2. Respondent No. 2 is depicted as stating

"No, this (Shiv Sena) is not mine." In the news item (Ex. X-21) a report is published with the heading "Shiv Sena at service of Sadashiv." It states "Sadoba Patil tried to deny his association with the Shiv Sena but nobody is going to believe in this. It is well known that Patil always speaks with two mouths. It is true that Sadoba had denied any relationship with Shiv Sena, that it is known to many people from Girgaon and Thakurdwar area that the workers of Shiv Sena were fixing his election posters in these areas. If Shiv Sena and Sadoba have no relation whatsoever, why the workers of Shiv Sena should offer their service for fixing posters? This topic is being discussed keenly by the people from Girgaon area."

It is the case of the petitioner that by this publication the name of respondent No. 2 is associated with a political body which at sometime during the election period indulged in acts of Goondaism and is thus a reflection upon his personal character. The contention, on the other hand, of respondent No. 1 is that these publications merely express an opinion and are not publications of statements of facts, that they are not a personal attack on the character of respondent No. 2, that they merely constitute political criticism of the activities of respondent No. 2.

There is evidence on record about the political philosophy of Shiv Sena and its activities. The petitioner in his evidence stated that the non-Marathi speaking people in Bombay feel that the activities of Shiv Sena were separatist and anti-national and the life and property of non-Marathi speaking people in Bombay are not safe. Such people hate the activities of Shiv Sena and association of respondent No. 2 with the activities of Shiv Sena. Shiv Sena, according to the petitioner, advocates that Maharashtrians should be given more opportunities for employment and accommodation in Maharashtra. He considered such activities anti-national as they were repugnant to equality of opportunity. According to him, at the election Shiv Sena supported those candidates who agreed with its ideology.

Respondent No. 2 said that he became aware of the existence of the body called Shiv Sena for the first time when a report was published in newspaper about looting of shops of South Indians sometime in the end of the year 1966. His attention was drawn by the Prime Minister to this report and he said that the activities of Shiv Sena should be immediately put down. He did not support the activities of Shiv Sena either directly or indirectly and did not subscribe to the policy or the objects of Shiv Sena. He said that during the election period, a question was put to him while he was addressing a press conference and he stated that he had nothing to do with Shiv Sena or its activities and he denounced it. He says that the insinuation by this publication that he created Shiv Sena is entirely false.

The evidence of respondent No. 1 is that he came to know of these publications for the first time after this election petition was filed. He did not believe that Shiv Sena is created by respondent No. 2 or is Sadashiv Sena belonging to him. He did not believe that respondent No. 2 was supporting the Shiv Sena. He said that his attention was drawn to a report (Ex. Y-8) published in Indian Express dated February 6, 1967 wherein it is stated that respondent No. 2 had advised the organisers of Shiv Sena not to indulge in undemocratic acts. In view of this report, respondent No. 1 said that he might have stated that respondent No. 2 was not right in denying his connection with Shiv Sena.

From this evidence it charges that Shiv Sena, no doubt is a political organisation, it came into limelight when its workers indulged in acts of violence and looted the shops of South Indians at Dadar. Association of the name of respondent No. 2 with such a body as its creator and with its activities, is certainly a reflection upon the personal character of respondent No. 2. These allegations in Ex. X-29, Ex. X-22 and Ex. X-21 are undoubtedly false.

Reference is then made to a group of three publications associating the name of respondent No. 2 as the agent of American capitalists. They are news item (Ex. X-25) published in the issue of Maratha dated December 12, 1966, (Ex. Y-5 is a full report of this news item), a news item (part of Ex. X-32) published in the issue of Maratha dated February 11, 1967 and a news item (Ex. X-7) published in the issue of Maratha dated February 14, 1967.

Ex. X-25 purports to contain a report of a speech alleged to be made by Communist leader Dange. This news item is headed "Defeat Sadoba Patil, the agent of American capitalists." In the news item respondent No. 2 is described as an agent of American capitalists and assassinator of democracy. The news item (Ex. X-32) purports to contain a report of a speech alleged to be made by Acharya Atre. It reports that Acharya Atre said, that respondent No. 2 is a hired agent

of America is a well-known fact; whether Goa formed part of Portugal or Kashmir formed part of Pakistan, these capitalists are least concerned about such things. The news item (Ex. X-7) states that respondent No. 2 is already known as an agent of the American imperialism in India.

The contention on behalf of the petitioner is that by describing respondent No. 2 as the agent of American capitalists or as a hired agent of America or as an agent of American imperialism, there is attack on his basic patriotism. The contention, on the other hand, of respondent No. 1 is that this is merely a political criticism of the activities of respondent No. 2 and does not constitute attack on his personal character.

Respondent No. 2 in his evidence has stated that the statements published in these publications are totally false and one should be ashamed of making such statements. They caste aspersion upon his character. Nothing could be more damaging to his character than such statements. It insinuates that just as America is indifferent to whether Goa forms part of Portugal or Kashmir forms part of Pakistan, so also, he, who was described as a hired agent of America, was indifferent to Goa forming part of Portugal or Kashmir forming part of Pakistan. There is no cross-examination of respondent No. 2 on this part of the evidence. He was cross-examined about his views on socialism. He was asked whether in any of his speeches he referred to what was called General Motors Socialism. He said that in one of his speeches he remembers to have stated that General Motors has large number of shareholders, that if any motor corporation wanted to have any rise in price of motor cars even of 50 dollars per car or so, they had to justify such a scheme before the Inter Commerce Commission, that at that stage even the leaders of labour were heard and that the rise in price of motors was permitted only if the Commission certified, that there was thus social control on capital even in U.S.A. He, however, did not remember whether any other speaker described it by saying that he was a follower of General Motor Socialism. He also said that he had expressed his profound appreciation for the democratic system prevailing in America and the other democracies and that in our Constitution, we borrowed a number of things from the American Constitution and Constitutions of other countries.

By describing him as the agent of American capitalists or the hired agent or the agent of American Imperialism, the suggestion made is that he looks after the interests of a foreign country and by describing him as hired agent, the idea intended to be conveyed is that he does so for monetary consideration. This cannot be regarded as a mere political criticism of respondent No. 2. It is an attack on his patriotism and is a reflection on his personal character.

Reference is then made to a group of four publications wherein his name is associated with acts of Goondaism and violence. They are the news item (Ex. X-31) published in the issue of Maratha dated February 8, 1967, the news item (Part of Ex. X-32) published in the issue of Maratha dated February 11, 1967, an editorial (Ex. X-36) published in the issue of Maratha dated February 17, 1967 and a leading article (Ex. X-37) published in the issue of Maratha dated February 20, 1967.

The news item (Ex. X-31) is headed "Atrocities by the Goondas of Sadoba" and it reports that the hired Goondas of respondent No. 2 indulged in acts of violence therein referred to. News item (Ex. X-32 part) is headed "Atrocities of Sadoba & Co." for fear of defeat which purports to describe a strategy adopted by agents of respondent No. 2. It is a part of this strategy to assault Samiti candidates and their workers. This news item also purports to contain a report of a statement alleged to be made by respondent No. 1 at a press conference to the effect that many Goondas have been set free and were placed at the disposal of respondent No. 2. The editorial (Ex. X-36) is headed "The uncrowned Gundeshwar (Lord of Goondas) of Bombay." In the first part of this editorial it is stated that all acts of Goondalism are receiving the inspiration from one source only and that a dynamo is kept for that purpose at one central place. Then it refers to the miscreants disrupting the meetings of the opposing parties by means of acts of hooliganism causing damage to goods and property by pelting stones, threatening the candidates of opposing parties, occasionally kidnapping them, belabouring the workers of the opposing parties, having the opposing candidates beaten or killed by hirelings, murdering the workers of parties other than the Congress. Things like this are rampant today throughout the country. . . . The uniform character of the source of these diverse activities can be immediately visualised. In this editorial there is a reference to the attack on Mr. Madhu Limaye as follows: "The merciless attack which was recently made on Shri Madhu Limaye, a well known

Member of Parliament, is just an example of the limits to which Goondas can go. The charge made by Sau. Champabai Limaye about a Central Cabinet Minister being the moving spirit behind these Goondas appears to be of special import in the context of these nationwide acts of Goondas." These are general allegations referring to one source without specifying what that source is. The editorial further proceeds to state: "Take the instance of Sadoba Patil himself." It criticises the various activities of respondent No. 2. It further states: "It is of course a well known fact that Sadoba Patil has a very long and enduring friendship with Goondaism. Sadoba has become an expert from experience in riding on two horses, pleasing capitalists on one side and humouring Goondas on the other side. There cannot be two opinions that Sadoba is incomparable in at least this one matter. The acts of Goondaism practised by Shiv Sena became widespread in Bombay only when it reached the stage of deterioration in the form of Sadashiv Sena. Now although Sadoba is holding a hand like Vishwamitra over one eye in the matter of Shiv Sena, he is certainly looking at that child of his born out of illicit love relations with is half open second.... From this also one feels certain that Gangotri (the source) of the acts of Goondaism which are prevalent today all over Bombay owes its origin to the Congress House opposite the doors of the brothels situate near the Kennedy Bridge. Presuming that Sadoba's kingship over Bombay is just befitting this American culture, we are confident that no real Bombayite will grudge paying a Nazrana (compliment) to the uncrowned Lord of Goondas like Sadoba that his reign is going on at present in full swing all over Greater Bombay." The same theme is continued in the leading article (Ex. X-37) published with the heading "Destroy Sadobashahi." This leading article *inter alia* states: "Today the dictatorial tendency in the Congress has reached its apex and in India 'dictatorship' is meaningfully called by the name 'Sadobashahi.' The only difference is that the atrocities which are committed by dictators with the help of the arm are committed and hushed up by Sadoba with the help of Goondas.... Sadoba has now started undertaking 'Padayatras' (walking tours) too. This Tamasha (bafoonery) of Padayatra by Sadoba is as detestable as that of the cat embarking upon a Haj Pilgrimage after digesting a thousand mice. The very Sadoba Patil who has never given any exercise to his gigantic feet except that of trampling the masses under them for the last 18 years has now come forward to perform 'Padayatra' moving about with the mendicant's bowl for collecting votes. What a spectacle of hypocrisy this is: As goes the saying 'sins by night and penance by day' Sadoba seems to have remembered Rama in the two months of election period after having perpetrated Ravanashahi (tyranny) for five years. ... The Samiti has to perform the three-fold task of ending the corrupt Congress regime, liquidating Sadobashahi (dictatorship of Sadoba) which is spreading the reign of Goondaism....."

The contention on behalf of the petitioner is that by these publications, the name of respondent No. 2 is associated with various acts of Goondaism and is connected with crimes including crimes like attempt to commit murder and murder. The contention on behalf of respondent No. 1 is that in Ex. X-31 there is no personal attack on respondent No. 2, but the attack is on his workers, that in Ex. X-36 the dynamo of the source suggested is the Congress and not respondent No. 2, that the Central Cabinet Minister whose name is associated with the merciless attack on Madhu Limaye is not that of respondent No. 2.

Respondent No. 2 in his evidence has enumerated the various false statements in relation to his personal character and conduct in the editorial Ex. X-36. They are the following:

- (1) The heading "The uncrowned Gandeshwar (Lord of Goondas) of Bombay."
- (2) It is insinuated
 - (i) that respondent No. 2 indulged in acts of Goondaism and the acts of hooliganism,
 - (ii) that respondent No. 2 caused damage to goods and property by pelting stones,
 - (iii) that respondent No. 2 threatened candidates of the opposing parties and kidnapped them,
 - (iv) that respondent No. 2 disrupted meetings of the opposing parties,
 - (v) that respondent No. 2 belaboured workers of opposing parties,
 - (vi) that respondent No. 2 got opposing candidates beaten or killed by hirelings,

- (vii) that respondent No. 2 got workers of parties other than Congress murdered.
- (3) The insinuation in this article
- (i) that respondent No. 2 had a hand in the merciless attack on Madhu Limaye,
 - (ii) that there cannot be two opinions that Sadoba is incomparable in at least this one matter,
 - (iii) that the acts of Goondalism practised by Shiv Sena because widespread in Bombay only when it reached the stage of deterioration in the form of Sadsashiv Sena.
 - (iv) that now although Sadoba is holding a hand like Vishwamitra over one eye in the matter of Shiv Sena, he is certainly looking at that child of his born out of illicit love relations with his half open second eye.

The various allegations in these publications accusing respondent No. 2 having a hand in the acts of Goondalism and in criminal activities involving violence are patently false. Respondent No. 2 has clearly stated that he never indulged at any time in his life in any act of Goondalism, that he had nothing to do directly or indirectly with the alleged attack on Madhu Limaye. His evidence on this point is not at all challenged in cross-examination. These are serious allegations made without regard being had to truth and definitely are false statements in relation to the personal character and conduct of respondent No. 2.

The next publication relied in this behalf is an extract from an article by S. M. Purkar published at p-3 of the issue of Maratha dated December 28, 1966. They are at Ex. X-24 and Ex. Y-12. In these exhibits are shown the photographs of respondent No. 2, Mr. S. M. Joshi and Acharya Atre. The caption below the photograph of respondent No. 2 is "Najibkhan of Maharashtra, Sadoba Patil." The caption below the photograph of Mr. S. M. Joshi is "The Saubhagya (fortune) of Socialism" and the caption below the photograph of Acharya Atre is "Maharashtra" in human form." In this article respondent No. 2 is described as the Najibkhan of the political and economic interest of Maharashtra. The contention on behalf of the petitioner is that by describing him as the Najibkhan of Maharashtra, it is sought to be insinuated that he is the traitor to the cause of Maharashtra. The contention on behalf of respondent No. 1 on the other hand is that such description is merely an expression of opinion and not a statement of fact, that it is purely a political criticism and has no relation to the personal character of respondent No. 2.

It is well settled that adverse criticism however severe, however undignified or ill-mannered, however regrettable it might be in the interests of purity and decency of public life, in relation to the political views, position, reputation of action of a candidate, would not bring it within the mischief of the statute. The Court in such matters cannot Judge these statements in the light of their decency or desirability in so far as they are political statements not calculated to attack the personal character or conduct of any rival candidate. In this article, there is undoubtedly criticism suggesting that the activities of respondent No. 2 are against the political and economic interest of Maharashtra. If the matter has rested there only, it would be merely a political criticism of the acts and conduct of respondent No. 2, but in this article below his photograph, the caption is Najibkhan of Maharashtra, while in the body of the article he is described as Najibkhan of the political and economic interest of Maharashtra. Such a description of respondent No. 2 undoubtedly is in relation to the personal character and conduct of respondent No. 2 because Najibkhan is a historical figure, who, during the Maratha regime played treachery upon his masters. The petitioner in his evidence has stated that in the History of Maharashtra, Najibkhan is known as the most unscrupulous, notorious historical character and due to his treachery Maharashtra lost a very decisive battle of Panipat. In fact Maharashtra depended upon his assistance but he invited enemies of Maharashtra and stabbed Maharashtra in the back. In his cross-examination he said that he learnt about Najibkhan while he was at the school. Najibkhan was a soldier in the services of Holkars and had a battalion under him. In the battle of Panipat against Ahmedshah Abdali, he helped Mohammedans as a result of which Marathas suffered heavy losses. There is no evidence on record rebutting the fact that Najibkhan made his name as a

notorious historical figure who played treachery upon his masters, namely, Holkars and Marathas. To describe respondent No. 2 as the Najibkhan of Maharashtra or even as Najibkhan of Political and Economic interests of Maharashtra is certainly to insinuate that respondent No. 2 has not at his heart these interests of Maharashtra and he is unfaithful to that cause. This undoubtedly will be an attack on his personal character and conduct. Respondent No. 2 in his evidence has stated that such an insinuation is entirely false. There is no evidence to rebut it.

The next publication in Maratha is in reference to a report of a speech alleged to be made by respondent No. 1 at a public meeting held at Shivaji Park on January 31, 1967. That report is Ex. X-23 in the issue of Maratha dated February 1, 1967. The report says that in the course of his speech respondent No. 1 alleged to have stated: "It is true that even God cannot defeat Patil because God cannot exchange ballot boxes. He (God) is honest unlike Patil." While dealing with the second instance of the corrupt practice alleged to be committed by respondent No. 1 I have held that in the course of his speech respondent No. 1 did not utter these words. Respondent No. 2 in his evidence has stated that the statement that he exchanged ballot boxes is utterly false. Such an allegation against respondent No. 2 not only accuses him of utterly unfair conduct, but it also amounts to a criminal act of a very fraudulent nature. By such an allegation, accusation is made that he in the habit of winning elections by fraudulent and criminal acts. This undoubtedly is a false statement in relation to his personal character.

The next publication relied upon is a report Ex. X-15 in the issue of February 17, 1967 in respect of a statement made by Jagadguru Shankaracharya of Puri Pith at a press conference in Bombay. The report states *inter alia* "Jagadguru Shankaracharya expressed his clear opinion that S. K. Patil, who claims to have done everything for imposing a ban on cow-slaughter is a hypocrite. He stated that Madhu Limaye had levelled a clear charge that the riots which took place during the demonstrations staged at Delhi on the 7th of November for putting a ban on cow-slaughter had been brought about through Gundas by Shri S. K. Patil and Atulya Ghosh. Both of them have not specifically denied that up till now." In this statement there is a two fold allegation. First is that along with Atulya Ghosh, respondent No. 2 is alleged to have engineered the riots at Delhi through Goondas and the second is that the claim made by respondent No. 2 that he has done everything for imposing a ban on cow-slaughter shows that he is a hypocrite.

Respondent No. 2 in his evidence has said that he had no hand whatsoever, whether direct or indirect, in the riots that took place at Delhi on November, 7, 1966 that during those riots there was hooliganism, arson, looting and every form of crime, that there was arson and fire at the house of the Congress President and he had to make through water that was used for extinguishing fire. This evidence of respondent No. 2 is not challenged in. In his cross-examination nor is any evidence led to suggest that this evidence does not represent the truth. The accusation, therefore, that respondent No. 2 had a hand in the riots that took place at Delhi and those riots were engineered by him through Goondas is an entirely false accusation in relation to his personal character.

As regards the second part of the statement published in this issue of Maratha at one stage it was urged that it was not the petitioner's or respondent No. 2's case that he (respondent No. 2) has publicly claimed at any time that he has done everything for imposing a ban on cow-slaughter. The submission was that such a basic assumption in the report is not correct. It was however brought to the notice of the Counsel for the Petitioner and respondent No. 2 that no such plea is found either in the petition or in the written statement of respondent No. 2 nor as any evidence led to support such a plea. When these facts were pointed out, it was conceded both on behalf of the petitioner as well as respondent No. 2 that in view of the pleadings in the case and the evidence led, it will not be open either to the petitioner or to respondent No. 2 to urge such a plea.

Respondent No. 2 has however given evidence as regards his views in the matter of imposing ban on cow-slaughter and the steps that he has taken to impose such a ban on cow-slaughter. He has stated that the statement in this news item that he is a hypocrite is false. In his evidence he has stated that he considered cow as a sacred animal and respected it. As a Minister in charge of Agriculture, he did various things to protect animals and especially the cow. He detested cow-slaughter. In or about 1960-61, when he was the Minister in

charge of Food & Agriculture, Legislation was passed which provided for constitution of Animal Welfare Board. Prior thereto for a period of nearly 10 years, he was the President of All India Animal Welfare Association. Many times in Parliament, he stated that Indian Agriculture should be cow-based as distinguished from buffalo-based. India required 10 million bullocks for agriculture; there cannot be a strong bullock without a strong cow. In order to encourage drinking milk of cow, he started an experiment in Bombay with the co-operation of Humanitarian League; a sum of Rs. 2 lakhs was collected and the unit of cow was given to Aarey Colony with a view to create a cow unit that unit in Aarey Colony is working very well. Similarly in most of dairy farms such cow units there are his instance and these units are also working very well. As regards banning of cow slaughter he did everything in his power to convince Jagadguru Shankaracharya that legislation would be enacted to ban cow slaughter. After Jagadguru Shankaracharya started his fast some of his disciples came to him and asked him to do something so that something could be done for banning cow-slaughter and Jagadguru could be persuaded to end his fast. He placed himself at their disposal and thereafter had frequent conferences in Delhi. He had discussions with Swami Arvindanand, the sole representative of Goraksha Maha-Abhiyan Samiti to evolve a formula as a result of which Jagadguru might be persuaded to end his fast. In his opinion Article 48 of the Constitution permitted legislation prohibiting slaughter of cow and other milk and draught cattle. He said that there was a decision of Supreme Court which created a doubt about blanket prohibition. He said that while evolving a formula if it was necessary to amend Article 48 of the Constitution to permit a blanket prohibition on slaughter of cow, he would do his best to suggest an amendment of the Constitution. He said that he would resign his seat from Parliament if he was not able to do so. In his cross-examination, his attention was drawn to a passage at p. 237 in Welles Hangen's book "After Nehru, Who." That passage was to the following effect:

"Patil admits in private that the agitation against cow slaughter is 'wrongly connected with our religion.' But in public he protests his devotion to the Gosamvardhan Council. He once told Parliament:—'Honourable Members know my views. So far as cow protection is concerned, I am one with them and I know what really the cow wealth can mean for us. Not only is it necessary that the cow must be protected; it must not be killed.' When I pressed Patil to reconcile his statements, he finally retorted, 'Every one cannot be Jesus Christ. You have to win elections. My Deputy said something in favour of cow slaughter and almost lost his election. I had to rescue him. It is very delicate matter and must be dealt with delicately. You can't offend against the sentiments of millions of people at once.'"

Respondent No. 2 said that he was not correctly reported in this book. He said that out of the above passage, the following statements are not correct:—

- (1) "Patil admits in private that the agitation against cow-slaughter is wrongly connected with our religion, but in public he protests his devotion to the Gosamvardhan Council.....Everyone can't be Jesus Christ. You have to win elections. My deputy said something in favour of cow slaughter and almost lost his election. I had to rescue him. It's a very delicate matter and must be dealt with delicately. You can't offend against the sentiments of millions of people at once."

He said that his quotation as regards what he said in Parliament in the above para was correct. But Welles Hangen did not ask him to reconcile his views in private and public. As regards Jagadguru Shankaracharya's fast, he tried to intervene for termination of the fast and for bringing about settlement of the issue. He took far more interest than other Members of the Government at a later date. Delegations used to meet him often and at his suggestion, Sarva Daliya Goraksha Maha-Abhiyan Samiti appointed a sole representative, Swami. Arvindanand to negotiate with him and if need be, he was to discuss the matter with the Prime Minister. Swami Arvindanand had discussion with him for about 8 days. He states that 11 States had passed legislation for banning the cow-slaughter while the rest of the States had not passed legislation, that such States should be prevailed upon to impose the ban, the Central Government wrote to the other States to take the steps to ban cow-slaughter and it was because of Article 48 he had an impression that the Constitution permitted ban on cow slaughter and even on the day he gave evidence he was of that view except for the doubt created by the Judgment of the Supreme Court. He was aware of the decision of the Supreme

Court. In Mohamed Hanif Kureshi's case (1) (1959 S.C.R. 629) it is held that a total ban on the slaughter of cows of all ages, of she-buffaloes, bulls and bullocks (cattle or buffalo) after they ceased to be capable of yielding milk or of breeding or working as draught animals was not in the interests of the general public and was invalid. He was not, however, aware of the decision of the Supreme Court in *Abdul Hakim Curashi & Ors. v. State of Bihar*, AIR 1961 Suprme Court 448 to the effect that S.3 of the Bihar Act to the extent it increased the age limit to 25 for the purpose of their slaughter imposed unreasonable restriction on the fundamental right under Article 19 and was void and that the U.P. Act to the extent that it imposed a high age limit of 20 years and an additional condition that they should be permanently unfit and unservicable was also void as being unreasonable. He said that he could not say whether a decision was taken by the Central Government to amend the Constitution so as to permit a total ban on cow slaughter. He did not try to find whether such a decision was taken by Government or not. He said that he did not come across any declaration either by the Government or by the Prime Minister to the effect that appropriate steps would be taken to impose a total ban on cow-slaughter. As regards the negotiations for termination of fast by Jagadguru Shankaracharya he said that after a certain stage these negotiations were carried on by the Prime Minister's representative Mr. Jha and he could not bring about any settlement though he brought them nearer and he smoothened the negotiations. He thought that the gap between the Government and Sarva Daliya Go aksha Maha-Abhiyan Samiti was being bridged but he did not know in what direction such gap was bridged. He actually did not know the terms as such terms did not appear in the papers. He said that during the time he was a Member of Parliament he had not introduced any bill for imposing total ban on cow-slaughter. As a Member of the Congress Parliamentary Party, he did not attempt to introduce such a bill in the Parliament. Such bills are to be passed by the Legislature of the State and that was why he could not introduce such a bill in the Parliament. He did not know whether certain other members had introduced bills in Lok Sabha for a total ban on cow-slaughter. When a suggestion was made to him that he professed support for ban on cow-slaughter without actually intending it and that he did it only with a view to get votes at the election, he denied the correctness of such suggestion. He said that he believed cow as a religious symbol and advocated support for total ban on cow-slaughter. It was not a matter of profession but a deep seated conviction.

The fact that respondent No. 2 is in favour of a ban on cow-slaughter is supported by a statement made by him in April 1959. A report of that statement was published in the issue of Times of India dated April 26, 1959 (Ex. X-67). This report refers to a speech made by respondent No. 2 at the time of the opening of a cow section in the Aarey Milk Colony. He asked the organisers to create public opinion in favour of ban on cow-slaughter. From this evidence, it is clear that respondent No. 2 is in favour of imposing a complete ban on cow-slaughter. The evidence however does not directly enumerate the concrete specific and effective steps that (respondent No. 2) adopted for imposing ban on cow-slaughter or for enacting legislation for such ban or for amending Article 48 of the Constitution so as to permit imposition of complete ban on cow-slaughter.

The next publication referred to are a cartoon and a poem published in the issue of Maratha dated December 31 1966 (Ex. X-16). In this cartoon it is depicted on one side a cow and Jagadguru Shankaracharya standing by her side saying "Cow is my mother. Do not kill her". On the other side of the cartoon is shown the figure of respondent No. 2 standing by the side of a pig, saying "the pig is my father. Do not kill him." In this very issue of Maratha a poem is published with the heading "wailing of Sadoba, the son of a pig." There can be no doubt that both the cartoon and the poem are scandalous in nature and published in the utterly bad taste. They contain extremely undignified criticism in relation to respondent No. 2. However, neither the cartoon nor the poem deals with any aspect of personal character or conduct of respondent No. 2.

The last publication relied upon is a news item (Ex. X-35) published in the issue of Maratha dated February 16, 1967. This news item is in relation to a refusal of permission by the Commissioner of Police for holding a meeting by Sarvadaliya Goraksha Samiti. This news item, *inter alia* states "Sadoba Patil made conspiracy and thus banned the Azad Maidan and Chowpatty, to the meetings of the Sarvadaliya Goraksha Samiti with a fear that the speech of Shankaracharya Jagadguru of Puri may not have adverse effect on the voters from his

constituency. By the above statement, it is insinuated that respondent No. 2 had a hand in refusal of permission by Government. Such a news item conveys the idea of moral turpitude and this is effectively brought out by using the word "conspiracy". There is evidence on record that respondent No. 2 had nothing to do with the granting or refusal permission for holding such meetings.

It is one of the essential ingredients of the corrupt practice under section 123(4) that the statement of fact must be believed to be false or must not be believed to be true. The question arises whether such belief has to be entertained (a) by the candidate or (b) by the agent or (c) by the other persons punishing it with the consent of the candidate or his election agent. The contention on behalf of the petitioner is that in view of the decision of the Supreme Court in *Kumara Nand v. Brij Mohanlal Sharma* AIR 1967 Supreme Court, 803, such belief under the section should be entertained by the candidate, even in cases where the publication is by a person other than the candidate.

In *Kumara Nand's* case, as held by the Supreme Court the appellant (returned candidate) was responsible for the publication of a poem entitled: "Mang raha hoon do bhai vote." This poem was composed by one Avinash Chunder of Beawar. The poem in question was aimed at the respondent and he was a target of the attack made therein: that the poem in question was read at the election meeting of February 21, 1962 which the appellant himself was presiding. Avinash Chunder had recited this poem at this meeting; the booklet containing the poem was printed at the instance of one Chand Mohamad, who was the polling and counting agent of the appellant and who had also paid the author Avinash Chunder, something for it. The appellant had seen the booklet containing the poem something before the meeting of February 21, 1962 and had read it. The booklet containing the poem was printed with the knowledge and approval of the election agent of the appellant; the poem was recited at the meeting of February 21, 1962 by Avinash Chunder. The appellant was presiding at that meeting and one Kalyan Singh, his election agent was present in it. The High Court while deciding this case had taken the view that the belief of Avinash Chunder was immaterial and that it was the belief of the appellant that mattered. Before the Supreme Court, it was sought to be contended that it should have been proved that Avinash Chunder who recited the poem at the meeting believed the statement to be false or did not believe it to be true, that on this point Avinash Chunder was not questioned though he appeared as a witness and that, therefore, a corrupt practice within the meaning of s.123(4) was not established. This contention was negatived and the decision of the High Court to the effect that the belief of Avinash Chunder was immaterial and that it was the belief of the appellant that mattered was confirmed. The Supreme Court enumerated the requirements of this corrupt practice that were laid down earlier in *Sheopal Singh v. Ram Pratap* AIR 1965 Supreme Court, 677. The sub-section requires: (i) publication of any statement of fact by a candidate, (ii) that the fact is false, (iii) the candidate believes it to be false or does not believe it to be true (iv) the statement is in relation to the personal character or conduct of another candidate and (v) the said statement is one being reasonably calculated to prejudice the prospects of the other candidate's election. At p. 813 the Supreme Court observed:—

"This case thus clearly lays down that the person with whose belief the provision is concerned is ordinarily the candidate who, if we may say so, is responsible for the publication. The responsibility of the candidate for the publication arises if he publishes the thing himself. He is equally responsible for the publication if it is published by his agent. Thirdly is also responsible where the thing is published by any other person but with the consent of the candidate or his election agent. In all three cases the responsibility is of the candidate and it is ordinarily the candidate's belief that matters for this purpose. If the candidate either believes the statement to be false or does not believe it to be true he would be responsible under s. 123(4). In the present case the poem was not actually read by the appellant, but it was read in his presence at a meeting at which he was presiding by Avinash Chunder. In these circumstances, the High Court was right in coming to the conclusion that the recitation of the poem by Avinash Chunder at the meeting amounted to the publication of the false statement of fact contained in it by another person with the consent of the candidate, and in this case, even of his election agent who was also present at the

meeting. But the responsibility for such publication in the circumstances of this case is of the candidate and it is candidate's belief that matters and not the belief of the person who actually read it with the consent of the candidate. What would be the position in a case inspire the candidate had no knowledge at all of the publication before it was made need not be considered for what is not so here. It is not disputed in this case that the statement that the respondent was the greatest of all thieves, was false. It is also not seriously challenged that the appellant did not believe it to be true. The contention that Avinash Chunder's belief should have been proved must therefore fail."

This case therefore shows that it was decided on the footing that the publication was by a person other than the candidate, but which his consent and that in such a case, the requisite belief provided in the sub-section must be entertained by the candidate and the belief of the publisher was not relevant.

Respondent No. 1 has deposed in his evidence that the various publications in *Maratha*, namely Ex. X-27, Ex. X-20, Ex. X-29, Ex. X-22, Ex. X-21, Ex. X-25, Ex. X-32, Ex. X-7, Ex. X-31, Ex. X-32, Ex. X-36, Ex. X-37, Ex. X-24, Ex. X-23, Ex. X-15, Ex. X-16 and Ex. X-35 were seen by him for the first time after this Election Petition was filed. Even on the date when he gave evidence he had not gone through each one of them. He went through some of them after this election petition was filed. None of these news items, cartoons, editorials was published with his consent or knowledge. He generally said that no news item, editorial or article in relation to the personal character and conduct of respondent No. 2 was published in *Maratha* during the election period with his consent or knowledge. In his cross-examination he was asked the various questions about his belief when he was in the witness box in relation to the various things stated or published in these news items, cartoons editorials etc. and he stated that he did not believe that respondent No. 2 collected election funds by threats or coercion, that he did not believe as true the statement that respondent No. 2 provided lacs of rupees as bribe to supporters of Goa to keep Goa as a part of the Centrally administered territory, that he did not believe that Shiv Sena was a creation of respondent No. 2 or Sadashiv Sena or any Sena belonging to him, that he did not believe that respondent No. 2 was at any time the agent of America or hired agent of American Capitalist or a Dada of Capitalists. He was unable to say whether respondent No. 2 could be described as Najibkhan of Maharashtra as he did not know who Najibkhan was. He did not believe that respondent No. 2 indulged in any acts of violence or engaged Goondas; he did not believe that any Goondas were set free and placed at his disposal; he did not believe that respondent No. 2 would change ballot boxes with a view to win the election. In short, when his attention was drawn to the various items and statements contained in these publications, he deposed that he did not believe those statements in relation to the personal character of respondent No. 2 to be true.

The contention of respondent No. 1 is that none of these publications was published either with his knowledge or consent. At the stage when these statements were published, he had no occasion even to apply his mind and consider whether those statements were true or false; that in order to constitute a corrupt practice under section 123(4) the requisite belief must be entertained by the candidate at or prior to the time of publication of a false statement in relation to the personal character or conduct of the candidate. His belief at the stage of a trial while he is in the witness box is entirely irrelevant. Having regard to the nature of evidence in this case. Mr. Jethmalani on behalf of the petitioner was unable to say that these publications containing various false statements in relation to the personal character or conduct of respondent No. 2 were either seen or approved by respondent No. 1 before they were published or they were otherwise brought to his notice before the publication. The submission on his behalf was that the Court has to consider what would have been the belief of respondent No. 1, if such false statement were shown to respondent No. 1 or were brought to his knowledge. In my opinion, the requisite belief on the part of respondent No. 1 about a false statement in relation to personal character and conduct of respondent No. 2 must be entertained at or prior to the time of publication of such false statement. Section 123(4) contains an ingredient of *mens rea* and such belief must exist at or prior to the time of publication. Respondent No. 1 had no occasion to entertain any such belief at or prior to the time of publication of the various cartoons, articles, news items etc. as he was not aware of their

contents or had no opportunity to approve them at or prior to their publication.

If section 123(4), however, requires that in case of a publication by an agent of a returned candidate to constitute corrupt practice, the requisite belief as contained in this section has to be entered by the agent then in the present case, it is Atre's belief about these publications that will be the relevant factor. Respondent No. 2 in his deposition has stated that the various false statements made by Acharya Atre in his *Maratha* are made knowing them to be false. There is no other evidence in rebuttal. It, therefore, follows that at the time of publication of the statements Acharya Atre knew that these statements were false.

As regards these publications in *Maratha*, the last point to be considered is whether these publications are reasonably calculated to prejudice the prospects of election of respondent No. 2. A number of facts exists in the present case, which go to show that these publications are reasonably calculated to prejudice the prospects of the election of respondent No. 2. These publications show that there was a persistent propaganda between December 12, 1966 and February 20, 1967, that is right upto the eve of the polling day; that these statements dealt with a variety of subjects and made false accusations against the personal character and conduct of respondent No. 2; he is accused of collecting funds by extortion or coercion; he is alleged to have bribed lacs of rupees to affect the result of Goa Poll; he is described as a creator of Shiv Sena; he is described as the hired agent of American capitalist; he is accused of indulging in various acts of Goondaism; he is described as Najibkhan of Maharashtra; he is accused of exchanging ballot boxes with a view to win elections; he is charged with having a hand in engineering riots at Delhi; he is alleged to have exercised his influence in relation to the refusal of penfit for holding public meetings. Some of these news items are repeated more than once during the short period. Reference to his association with Shiv Sena is to be found thrice within a period of 10 days between January 20, 1967 and February, 1968. His description as the American Capitalist's agent is also to be found thrice; Wild and reckless allegations suggesting that he is indulging in acts of Goondaism are made on four occasions. These statements are published through the medium of a newspaper which has a fairly good circulation. The petitioner in his evidence has said that *Daily Maratha* enjoys wide circulation throughout Maharashtra and especially in Bombay and the area of Bombay South Parliamentary Constituency. *Maratha* has a daily circulation of about 62,000 to about 70,000 of copies; that during the time of election, the circulation was more. As a spicy newspaper, it is not only read by an individual but it is read over in a group. The object of publishing these statements was quite obvious, namely, to affect the chances of election of respondent No. 2 at the poll. These factors go to show that the publications were reasonably calculated to prejudice the prospects of elections of respondent No. 2.

The result, therefore, is that in this case there is no evidence that at or prior to the time of publication of these news items, cartoons etc., respondent No. 1 believed them to be false or did not believe them to be true. No corrupt practice is therefore committed by publication thereof. If, however, the requisite belief that is required to be entertained is that of a publisher, when it is published by an agent, then there is no doubt that a corrupt practice within the meaning of section 123(4) of the Act is committed by Acharya Atre as the agent of respondent No. 1 by publishing these various news items, cartoons etc. in his newspaper *Maratha*.

The next question that arises for consideration is whether the election of respondent No. 2 is affected by the mere commission of a corrupt practice by Atre as agent of respondent No. 1. The commission of a mere corrupt practice by an agent of the returned candidate does not *ipso facto* render the election of respondent No. 1 void or entitle the Court to declare it void. Section 100 of the Act lays down the grounds for declaring the election to be void. For the purposes of the present case, only two of the clauses of sub-section (1) of this section are relevant. They are clauses (b) and (d)(ii) of section 100(1). These sections are as under:—

“100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a)

- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c)
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
- (i)
 - (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
 - (iii)
 - (iv)
- the High Court shall declare the election of the returned candidate to be void."

It is necessary to consider whether any of these grounds exist in the present case for declaring the election to be void.

To satisfy the requirement of the ground contained in clause (b) it has to be established that the corrupt practice has been committed (1) by a returned candidate, or (2) his election agent, or (3) by any other person with the consent of a returned candidate or his election agent.

The argument on behalf of the Petitioner is that when a corrupt practice is committed by an agent of a returned candidate, the Court shall presume consent until the contrary is proved, that the burden lies upon the returned candidate to show that neither he nor his election agent consented to the commission of a corrupt practice by the agent. Reliance was placed by the petitioner upon several decisions. In *Anjaneya Reddy vs. Gangi Reddy & others* (1960) XXI Election Law Reports, 247, the Mysore High Court took the view that under sections 100 and 123 of the Representation of the People Act, 1951, as amended in 1956, corrupt practices committed by agents of the candidate (other than election agents) do not stand on the same footing as corrupt practices committed by "other persons". The words "any other person with the consent of a returned candidate or his election agent" in section 100(1)(b) should be held to comprehend two clauses of persons, viz., (i) an "agent" whose actions are deemed to have been consented to by a candidate, and (ii) other persons whose actions are in fact consented to by a candidate or his election agent; for, once a person has acted as an "agent" in an election, he must be deemed to have acted with the consent of the candidate, and such an interpretation alone attach some meaning to section 100(2) which has been retained by the Amendment Act of 1956. Sub-section (2) of section 100 is a proviso to section 100(1)(b) and not to section 100(1)(d)(ii), and its effect is that if a corrupt practice is committed by an agent (who must be deemed to have acted with the consent of the candidate) the election need not be set aside if the conditions mentioned in section 100(2) are proved. It is not proper to regard section 100(2) as having been retained in the statute by an oversight of the Legislature. The Amendment Act 58 of 1958 has not merely clarified the meaning of section 100(1) and (2) as amended in 1956, but has materially altered the law with respect to corrupt practice committed by agents other than election agents. Under the Act as amended in 1958, if a "corrupt practice" is committed by the candidate or his election agent or by any other person with the consent of the candidate or his election agent, then it would fall within the mischief of section 100(1)(b) and if it is committed by an agent of the returned candidate other than his election agent, then it would come within the ambit of section 100(1)(d)(ii); but even if the result of the election of the returned candidate has been materially affected by any corrupt practice (in ordinary parlance) committed in the interests of the returned candidate, the election cannot be set aside, if it is committed by persons other than those mentioned in sections 100(1)(b) and 100(1)(d)(ii). The amendment of 1958 has not however removed all the anomalies that exist.

An appeal from this decision was filed in the Supreme Court and the decision of the Supreme Court was reported in *Gangi Reddy vs. Anjaneya Reddy* (1960) XXII Election Law Reports, 261. This question, however, was not considered in the appeal and the appeal was disposed of on other grounds.

To the same effect is the view taken by the Assam High Court in *Nani Gopal v. Abdul Hamid*, AIR 1959 Assam p. 200. In that case, Sarjoo Prasad C. J. While dealing with the question of consent of a corrupt practice committed by an agent observed at p. 203: It is common knowledge that in elections many strangers start taking interest, who have directly no concern with

the candidates or their election agents and have never been asked to do anything on their behalf in furtherance of their election. Such persons are in the position of mere intermeddlers or sympathisers and the candidate or his election agent will have no responsibility for anything done by them, even if the act is done with a view to advance the prospect of the candidate's election or results in some advantage to him, unless it is shown that the candidate or his election agent had given his express or implied consent to the act in question or had knowingly taken the benefit of his conduct at the time. The case, however, of an "agent" who has been proved to be regularly working for the candidate during the election, stands on a somewhat different footing. In his case, approval or consent to any act done by him to promote the candidate's election is implied. Where, therefore, corrupt practice in the course of the election proceedings is attributed to an "agent", it raises a strong presumption that it was done at the instance or with the express or implied consent of the candidate himself. The candidate is himself vicariously responsible for the act and conduct of his "agent" during the election.

An appeal was preferred to the Supreme Court against this decision and the decision of the Supreme Court is reported in *Abdul Hamid Choudhury v. Nani Gopal* (1960) XXII Election Law Reports, 353. This question, however, was not decided by the Supreme Court.

The view taken by Sarjoo' Prosad C. J. in *Nani Gopal's* case is followed by him in the case of *Inder Lall v. Lal Singh*, AIR 1961 Rajasthan 122. At p. 127 it is pointed out: The Tribunal appears to be in error in thinking that express consent of the contesting respondent had to be proved before he could be held liable for the acts of the General Secretary of the District Congress Committee or the Publicity Secretary of the Nagar Congress Committee; and since there was no direct evidence on the point that Sugan Chand Jain was appointed an agent in writing by the respondent No. 1 or orally in the presence of any person, the Tribunal held that the said respondent could not be responsible for the acts of those persons. This, in our opinion, is a complete misconception of the legal principle, and we regret to have to say that the Tribunal did not properly appreciate the decision which was delivered by me as the Chief Justice of the High Court of Assam in *Nani Gopal Swami v. Abdul Hamid Choudhury*, AIR 1959, Assam 200, on which, as the Tribunal observes, both parties relied before it. The High Court further took the view that the District Congress Committee Chittorgarh and the Nagar Congress Committee there with their Secretaries and publicity Secretary were all agents of the contesting respondent Shri Lal Singh. It further observed: "Therefore, it must be held that the publications in this case were by the agents of the respondent No. 1 and we cannot believe that respondent No. 1 was unaware all along about the activities of Sugan Chand who was mainly responsible for the work of publicity on his behalf and in respect of his candidature. The law provides that in such cases unless any of the exceptions mentioned in the sub-section (2) of s. 100 of the Act are found to exist, the Tribunal should assume that the returned candidate was guilty of corrupt practice by his agent and declare the election void." The High Court, however, on the facts of the case, took the view that the impugned publication was not an attack on the personal character of the candidate and, therefore, no corrupt practice was committed. It accordingly confirmed the finding of the Election Tribunal that the election could not be set aside though on different grounds.

An appeal was preferred against this decision to the Supreme Court and the decision of the Supreme Court is reported in *Inder Lal v. Lal Singh*, AIR 1962 S. C. 1156. The Supreme Court did not agree with the view taken by the High Court that the impugned publication was not in relation to the personal character of the candidate. This was the basis of the finding of the Election Tribunal. It allowed the appeal and held that any point argued before the Supreme Court must be declared to be invalid and that the election of the returned candidate must be declared to be invalid. In para 15 of the judgment at p. 1160, the Supreme Court observed: "On the result, we must reverse the finding of the High Court that publication of the impugned pamphlets does not constitute a corrupt practice under s. 123 (4). The result of this conclusion inevitably is that the election of respondent No. 1 must be declared to be invalid because there is no doubt that the corrupt practice proved in this case falls under s. 100 (1) (b) and is outside the purview of s. 100 (2)."

In view of these observations, Mr. Jethmalani has strenuously urged that by declaring the election to be void, the Supreme Court has come to the conclusion that the findings as regards the other ingredients of this corrupt practice are confirmed by it and it has been impliedly held that in case of a corrupt practice committed by an agent, consent is presumed. Such a contention appears to me to be rather far fetched. The question whether in a case of corrupt practice by an agent, consent of the candidate is presumed or not was neither argued before nor decided in this case, by the Supreme Court. In the entire judgment, there is no discussion on such a contention and simply because the election of the returned candidate was held to be void, it is not possible to infer that the other findings of the High Court are confirmed, as the correctness thereof was not challenged before their Lordships.

The above decision of the Mysore High Court, the Assam High Court and the Rajasthan High Court do support the submissions urged by Mr. Jethmalani that in case of corrupt practice committed by an agent, the consent of a returned candidate is deemed to have given. This question is, however, considered in several cases arising before other High Courts including this Court. In *Sudhir Laxmina Hendre v. S. A. Danke & Ors.* XVII Election Law Reports 373, the Division Bench of this Court has taken the view contrary to the one urged by Mr. Jethmalani. In that case, the Court took the view that Atre was the agent of the successful candidate and that Atre by publishing certain false statements in relation to the personal character of the unsuccessful candidate, had committed a corrupt practice within the meaning of section 123 (4). After arriving at this finding, the Court considered the further question whether Atre in publishing the impugned statement had either implied or express consent of the returned candidate or his election agents. As there was no evidence to support the contention that there was an express or implied consent of the returned candidate to the publication by Atre as agent, the Court held that election of the returned candidate cannot be set aside under section 100 (1) (b) of the Act. This decision, therefore, clearly establishes that even in the case of a corrupt practice committed even by an agent and falling within the ambit of s. 123 (4) the consent of the returned candidate or his election agent is further required in order to satisfy the requirements of the ground under s. 100 (1) (b) and if such consent either express or implied, of the returned candidate is not established, then the election cannot be declared void. This being the decision of the Division Bench of this Court is binding on me.

Several other High Courts have taken a view similar to that one taken by the Bombay High Court in the above case. In *Rustom Satin v. Dr. Sampooranand & Ors.* (1959) XX Election Law Reports, 221, the Allahabad High Court took the view that with regard to the workers appointed as such by a candidate himself or his election agent, even though the candidate (or his election agent) might have consented to their canvassing and working for him and he had also knowledge thereof, and such general consent and knowledge may make such persons 'agents' of the candidate for the purposes of section 123 of the Act in view of the Explanation I thereof, this would not be sufficient to have the election set aside unless it is further alleged and proved that the corrupt practices complained of were themselves committed with the consent or knowledge of the candidate, in view of the provisions contained in section 100 (1) (b) and 100 (1) (d) (ii).

Similar view is also taken by the same High Court in the case of *Jagan Rawat v. Krishna Dutt Paliwal* (1959) XX Election Law Reports p. 443. Same is the view of the Madhya Pradesh High Court in *Sarla Devi Pathak v. Birendra Singh & Ors.*, (1959) XX Election L. R. 275; of the Madras High Court in *M. A. Muthiah Chattiari v. Saw. Ganesan*, (1960) XX Election L. R. 215 at p. 216; of Assam High Court in *Biswanath v. Haralal Das*, AIR 1958 Assam 97; of Rajasthan High Court in *Krishna Kumar v. Krishna Gopal*, AIR 1964 Rajasthan 21; of the Kerala High Court in *Abdul Majeed v. Bhargavan*, AIR 1963 Kerala 18; and of the Gujarat High Court in *Lalsing v. Vallabhdas*, AIR 1963 62.

It may incidentally be mentioned that the above decision of the Assam High Court in *Biswanath Upadhyaya's* case is cited with approval by K. K. Desai J. in an unreported case of *Dattatraya vs. Dattatraya*, (Election Petition No. 1 of 1967 decided on 11th, 14th and 18th of August 1967) as laying down the correct legal principles. That also is the decision of the Court of co-ordinate jurisdiction and I am bound to follow it. Thus even in case of a corrupt practice committed by an agent of a returned candidate falling within the ambit of s. 123 (4) of the Act, it is necessary to establish the consent of the returned candidate to the commission of such corrupt practice before the election can be

declared void under section 100 (1) (b) of the Act. It is not disputed that such consent can either be express or implied. The argument on behalf of the petitioner is that the consent of a returned candidate to an act of publication need not be a specific consent with full knowledge of the words, lines and expression used in the publication; that acquiescence in continued propaganda by a person, known for his propensity to speak lies, or to use spicy language and material without factual substance is implied consent, that if two persons form a design or conspire that one of them shall carry on false propaganda then all false propaganda carried on thereafter with their consent, that such a submission applies with greater force to publications in Maratha after February 5, 1967 and that even if the standard of proof is required is higher than the one required in a civil case, the circumstantial evidence in this case is more than adequate to establish such implied consent.

While considering this contention, it is necessary to understand what the word "consent" implies. The meaning of the word "consent" as given in *Whatltons Law Lexicon* is "an act of reason accompanied with deliberation the mind weighing, as in a balance the good or evil on either side. Consent supposes three things—a physical power, a mental power and a free and serious use of them." Thus in order to establish consent, the above requirements must be fulfilled and it is only thereafter that a corrupt practice can be said to have been committed with the consent of a returned candidate.

In the present case, it is not the petitioner's case that he has established an actual conversation or correspondence between Atre and Respondent No. 1 asking him to publish these various scurrilous writings. It is his contention that he has established implied consent by circumstantial evidence, which is conclusive; that implied consent is of two kinds (a) that it may be held implicit in the very relationship that exists between the parties and (b) that which consists of mere connivance. The submission is that respondent No. 1 and Atre conspired to damage respondent No. 2's election prospects, that if this conspiracy is established every conspirator impliedly consents to all the overtacts done in pursuance of a conspiracy; that in some cases, especially cases of isolated or stray cases of corrupt practice, the Court may require evidence of knowledge of the actual practice, but it is by no means necessary or essential; that implied consent can be inferred from the mere fact that corrupt practice had been repeated openly on a number of occasions, more so when, those repeated acts are done by the agent.

Reliance was placed upon the decision of the Rajasthan High Court in *Sheopatsing vs. Narishchandra*, AIR 1958 Rajasthan 324. This was a case of a corrupt practice of carrying the voters in mechanically propelled vehicles by the agents of the returned candidate to the polling booth. In this case the knowledge of the returned candidate was implied from the numerous instances in which voters were carried in mechanically propelled vehicles by the agents to the polling booth, and from such knowledge implied consent was inferred. At p. 332, it is said: From the numerous instances in which voters were carried in mechanically propelled vehicles by the agents of the appellant some of whom were quite close to him, we are of the opinion that the appellant could not have been unaware of this transport of his voters by mechanically propelled vehicles and did nothing to stop it. We accordingly infer that they were so carried with his implied consent. The facts of this case shows that one of the vehicles in which the voters were carried was actually procured by the candidate himself while other vehicles were procured by agents, who were his very close relatives.

An appeal was preferred against this decision to the Supreme Court and the decision of the Supreme Court is reported in *Sheopatsing v. Narishchandra*, AIR 1960 S. C. 1217. The Supreme Court held that: Where a candidate after getting knowledge of the act of corrupt practice (conveyance of voters to the poll) on a polling day does not prohibit the regular repetition of similar acts on the following polling days, it is reasonable inference to draw that all the acts were committed not haphazard but by design and that the candidate must have consented to them. It also observed that a finding that the acts were done with the candidate's consent is one of the fact. This decision points out that before consent can be reasonably inferred it is necessary to establish that the candidate had knowledge of the act of corrupt practice. It will always depend upon the facts of each case whether such knowledge is established and consent should be inferred.

The other decision relied upon is the decision of the Supreme Court in *Bhagwan Datta V. Ram Ratanji* AIR 1960 S. C. 200. This also was a case of corrupt

practice committed by carrying the voters to polling stations in trucks belonging to a party of the candidate. This case does not lay down any general principle and appears to have been decided on the evidence in the case. The ratio of the case is to be found in para 13. It states:—On this evidence it cannot be said that the Election Tribunal was not justified in holding that the carrying of the voters to the polling station in the trucks of Achutanand was with the connivance of the appellant, who was a party candidate. That by itself would be enough to bring his case within s. 123 (6) of the Act. It is not unreasonable to impute to the candidate the knowledge of the work done by his party in this area and to impute the consequent connivance on his part.

Both these cases are cases of carrying the voters to the polling booth in mechanically propelled vehicles and the consent of the candidate was implied after the knowledge of the candidate to the commission of the corrupt practice is established. The fact that a corrupt practice has been repeatedly committed is undoubtedly a factor to be borne in mind along with other factors to arrive at the conclusion whether the returned candidate had knowledge of the Commission of the corrupt practice or impliedly consented thereto. It was then argued, having regard to the general principle of agency that an act of an agent is imputed to his master and that knowledge or consent is implied from mere appointment. Reference was made to the decision in *Emperor v. Haji Shait Mahomed & others* I. L. R. (1908) 32 Bombay, 10. This was a case of a prosecution for contravention of the provisions of the Emigration Act (Act No. XXI of 1883). The Court held that if a servant having been appointed as an agent for a particular business by his master, enters into an agreement in connection with that business every thing which he does within the scope of his employment for that purpose will be binding upon the master and the master will be criminally liable for such act of the servant under the Indian Emigration Act (XXI of 1883). In such a case the master's express knowledge of or consent to the act is not necessary, because by the very fact of the appointment of the servant as an agent in such a business the master's knowledge of or consent to every act done by the servant or agent within the scope of his employment is implied by law.

This decision proceeds upon the normal principles of civil law of agency in holding master vicariously liable for the acts of the agent. It can, however, have no application to cases of election agency. Under election law, a man may be regarded as agent if he is held to have been authorised to canvass even though he is neither employed nor appointed. Under the election law, the relation is not the common law relation of principal and agent. The candidate may be responsible for acts of persons acting on his behalf though such acts are beyond the scope of the authority given or even in violation of express injunction. That being the position of election agency, this case cannot be of much assistance.

It is necessary to consider the various factors which are referred to for contending that there is the implied consent. The first factor relied upon is that the propensity of Atre, the agent, is such that it may imply consent. Respondent No. 1 has admitted in his evidence that Maratha tries to tell many of the spicy stories in which there is no substance. There is tendency with newspaper Maratha to put everything against respondent No. 2 where he might have said anything against Congress. This respondent No. 1 found especially in the context of his election. The submission is that this knowledge of evil propensity of Maratha should imply consent. There is no warrant for inferring consent simply because this is the propensity of Maratha. Even in the past elections, i.e., in the years 1957 and 1962 Maratha campaigned vigorously for the candidates of Samyukta Maharashtra Samiti against respondent No. 2 but the nature of the propaganda carried on by Maratha in these earlier elections is not known. Respondent No. 1 was unable to say whether any false statements in relation to the personal character or conduct of respondent No. 2 were made at these elections. Respondent No. 1 himself addressed about 4 to 5 hundred election meetings but did not indulge in personal attack on respondent No. 2. At the time when he inaugurated his campaign on August 9, 1966, he made it amply clear that in his campaign, he would not say anything of personal nature against respondent No. 2. He also made a suggestion that both the candidates would come on the same platform and discuss about the problems facing the country. A report of this speech inaugurating his election campaign is published in the issue of Maharashtra Times dated August 10, 1966 (Ex. 200). This report is proved by the evidence of Ranadive. Even during the election period when respondent No. 1 wrote a letter dated February 7, 1967 (Ex. 67) to respondent No. 2 for bringing to his notice some incidents of breach of decency in electioneering, he also

made a suggestion that Sarvodaya Mandal should supervise electioneering by all candidates in Bombay South constituency, and that both of them should undertake joint campaigns. On occasions when respondent No. 1 and Atre were on the same platform, it is not even the case of the petitioner that Atre utilised those occasions to make any personal attack against respondent No. 2. Respondent No. 1 and Atre jointly addressed meetings on December 25, 1966 and January 31, 1967 at Shivaji Park. They also jointly addressed meetings at Colaba and at Worli. At none of these meetings was any personal attack made by Atre in relation to the personal character or conduct of respondent No. 12. Simply because Maratha is a newspaper of a spicy nature, it cannot be inferred that respondent No. 1 implicitly consented to whatever propaganda Acharya Atre carried on through his newspaper Maratha.

The argument then was that respondent No. 1 is a voracious reader and was in the habit of reading critically all the newspapers. He must, therefore, have read or become aware of various publications made in Maratha which are relied upon as instances of corrupt practice by Acharya Atre.

The evidence with regard to this contention shows that the office of the Bombay Labour Union, of which respondent No. 1 is and has been the President, is located at 204 Raja Rammohan Roy Road, that the offices of other important Unions are also located there, that at that office arrangement was made to receive all newspapers that are published in Bombay. So also, at the Thakurdwar election office of respondent No. 1 certain newspapers were received. Such newspapers might have been brought by the people who visited that office or they might have been regularly coming to that office. In the report (Ex. X-12) of the interview given to the representative of weekly Manus it is stated that respondent No. 1 reads all daily newspapers carefully and critically. Respondent No. 1 himself has given evidence about his habit of reading newspapers. He said that he used to read a lot before election campaign started. It is substantially right to say that he educated himself by reading vigorously. It is not even substantially correct to say that he used to read major daily papers critically. He read Indian Express daily for his news. He then went through the Times of India and glanced through other newspapers. In Economic Times and Financial Express he used to read carefully those items which interested him. If there was anything special in other newspapers to which his attention was drawn then he used to go through it. At his office, i.e., at 204 Raja Rammohan Roy Road, he used to glance through all the newspapers that were published in Bombay including Maratha. He admitted that that office was a regular subscriber of all these newspapers including Maratha. As regards the statement published in Ex. X-12, he stated that in the course of the interview he did not state that he used to read all daily newspapers carefully and critically.

This evidence gives an idea of the normal schedule of respondent No. 1 apart from the election period. The evidence, however, shows that this normal schedule was completely departed from during the election period. Respondent No. 1 in his evidence-in-chief has deposed about the heavy schedule that he had during the election time. He said that during election time he hardly read any newspaper. The only newspaper he used to glance through was Indian Express because by force of habit, that was the paper which he read first thing in the morning. In the last three months of the election campaign, it was not possible to read the paper Indian Express. The most that he could do was to read the headlines and if anything particular interested him, he used to glance through that thing. During the last three months of his election campaign, he had a very heavy schedule. Sometime from November 1966 he began visiting his constituency in the morning. He used to take his round by about 7 of 7-30 A.M. because by 9 A.M. people used to go out to their work. Thereafter he used to have group meetings in different localities till about lunch time. After lunch time he used to have meetings with his important workers in various parts of his constituency. From about 4 P.M. group meetings used to begin and by about 5 or 5-30 P.M. public meetings used to start. Public meetings used to go on generally up to about 2 A.M., sometimes even upto 4 A.M. This used to be his daily schedule. In this schedule it was not possible to go through minutely any newspaper, not even one newspaper. During the election period, he did not read Maratha at all. He might have gone through a headline in Maratha at any constituent's place when he visited. He said that he had no connection with Atre's newspaper Maratha either during the election time or at any other period. He has also deposed that during the election time he was very busy with his

campaign. In fact during the last three months of the campaign, he must have hardly visited his office at 204 Raja Rammohan Roy Road.

That such ordinarily will be the position of a candidate at the election when the contesting candidates from a particular constituency are important and leading politicians is also evident from the evidence of respondent No. 2 himself. Respondent No. 2 in his evidence said that his Secretary used to keep the cuttings of Maratha on his table during the time of the election period, but he hardly had time to go through such cuttings. During the election period, he did not go through every cutting that was placed before him. He might have gone through some of them. Election is not the time when the candidate has the time to go through every cutting. During the election period, his attention was drawn to some of the issues of Maratha which are tendered in this case and sometimes he was orally informed of what was published in some of the scurrilous articles but he had no time to go through these issues.

Having regard to this evidence, it is not possible to conclude that during the election period, respondent No. 1 read or glanced through the issues of Maratha wherein the various publications were made.

It was then urged on behalf of the petitioner that respondent No. 1 had left his publicity to be looked after by his colleagues Satav and Dinkar Sakrikar, who was his election agent. Satav is also instructing his legal advisers in the matter of this election petition. It is submitted that respondent No. 1 must have come to know of these various publications in Maratha through Satav or Sakrikar. It was also said that during the period of the election campaign, respondent No. 1 was from time to time interviewed by correspondents of several newspapers and that such correspondents must have brought to his notice the various statements that were published in the various issues of Maratha now referred to. To say the least, this is mere conjecture and surmise. There is no evidence to warrant such a submission.

The last circumstance relied upon was that there must have been a conspiracy between respondent No. 1 and Atre to carry on joint and vigorous propaganda against respondent No. 2 through the columns of Maratha.

The only pieces of evidence referred to to support such a plea of conspiracy are isolated instances that had taken place during the course of election campaign. It is said that both Acharya Atre and respondent No. 1 in the course of their election campaign referred to sometimes the same phrase in their utterance or publication. Reference was only made to the use of the phrase "code of conduct" in the news item (Ex. X-31) published in the issue of Maratha dated February 8, 1967 and the use of that phrase by respondent No. 1 at a press conference held at Bristol Grill Restaurant on February 9, 1967. In the news item (Ex. X-31) it is reported that respondent No. 2 has started ignoring the code of conduct and has gone to the extent of attacking the workers of opposition candidates while at the press conference at Bristol Grill Restaurant respondent No. 1 said that the action of respondent No. 2's supporters in tampering with the posters affixed by his supporters was against the code of conduct accepted by the political parties. No doubt, in Ex. X-31 as well as at the press conference reference is made to the code of conduct, but that by itself leads us to no where. It is a common phrase and is normally used to express a kind of behaviour that would be expected at a given point of time.

It was then said that both in Ex-31 as well as at the time of the press conference, false stories about acts of Goondalism were circulated. In Ex. X-31 reference is made to assault on Bhaskar Shetty and his co-workers, while at the press conference respondent No. 1 referred to incidents of stone throwing and assaults on his workers. During the course of his evidence he was asked about the names of the persons he had in mind and he has specified the names of about 4 persons like Barkva Dada, Chunila Lumba and others. Whether these stories are correct or false, it is difficult to judge. In Ex. X-31 reference is made to the source of information from which the material was gathered. It is stated that a complaint of the Gundagiri mentioned above was lodged at the Azad Maidan Police Station, but so far, none was arrested by the Police. In the present case, the Commissioner of Police and other officers from the police department have been examined as witnesses on behalf of the petitioner, but to none of them a question has been asked whether a complaint of the type mentioned in Ex. X-31 was lodged at the Azad Maidan Police Station as therein stated. So far as the statements at the press conference are concerned, I have already held that the

statement that convicts were released on parole or that externees were allowed to return or that execution of orders against externees was stayed in order to enable them to participate in Congress election campaign is a false statement, but whether there were incidents of stone throwing or assault on the workers present at the election meetings cannot be decided on the nature of the evidence on record. The evidence, however, establishes that neither Barkya Dada nor Chuni-lal Lumba was a convict or an externee who was permitted to participate in the election campaign on behalf of the Congress.

Then reference is made to the fracture suffered by Mr. Babubhai Chinai and the benefit of respondent No. 1 and Maratha at one time that this story of fracture being suffered by Babubhai Chinai was fake story. Reference is also made to the evidence of respondent No. 1 that on one day during the election period late at night some persons posing themselves to be the workers of the Telephone Department came to his house when in fact there was no complaint lodged with the Telephone Department. The submission was that by circulating such a story, respondent No. 1 intended to create an impression amongst the public that there was some apprehensions to his life. It was urged that similar views were expressed by Acharya Atre in Ex. X-36 in Maratha dated February 17, 1967 wherein reference is made to a Central Cabinet Minister being involved in the merciless attack on Madhu Limaye in Bihar. It was also pointed out that both respondent No. 1 as well as Atre during the course of election propaganda referred to association of respondent No. 2 with Shiv Sena. Reference was also made to respondent No. 2 being described as Najeebkhan of Maharashtra in an article written by one S. M. Purkar and published in the issue of Maratha (Ex. X-24). While respondent No. 1 in his evidence stated that during the time of his election campaign he used to point out that respondent No. 2 betrayed the interest of Maharashtra at the time of the formation of Samyukta Maharashtra and that Shiv Sena mainly carried on propaganda against him on the ground that he was not a Maharashtrian. It was also pointed out that a postcard received by respondent No. 1 from the Secretary of Jagadguru Shankaracharya thanking him for condemning the arrest of Jagadguru was published in the issue of Maratha. It was also pointed out that in the articles under the heading "George Fernandes Election Front" reference was to be found to the various statements made by respondent No. 1 in the three articles written by him and published in the issues of Blitz, viz., Ex. 62 and Ex. 63. It was said on behalf of the petitioner that these circumstances showed that there was a design or conspiracy between respondent No. 1 and Acharya Atre to carry on false propaganda against respondent No. 2 through the columns of Maratha that such false propaganda was carried on on a number of occasions during the election period and, therefore, consent of respondent No. 1 to such false propaganda must be presumed. These circumstances, in my opinion, are too slender to come to the conclusion that there was a design or conspiracy between Acharya Atre and respondent No. 1 to carry on false propaganda against respondent No. 2. Some of the factors referred to are merely common factors which are normally referred to at an election campaign. Consent requires that the two persons should agree to the same thing in the same sense. There is no evidence to prove such agreement between Acharya Atre and respondent No. 1 to carry on false propaganda against respondent No. 2. As pointed out earlier, consent requires an act of reason accompanied with deliberation, the mind weighing as in a balance the good or evil on either side. Consent supposes three things: physical power, mental power, and a free and serious use of them. The factors above referred to do not establish that there was any common design or conspiracy to work against respondent No. 2 or they consented to false propaganda being carried out against respondent No. 2 through the columns of Maratha.

The same standard of proof that is required for establishing a corrupt practice is also required for establishing consent of the candidate under section 100 (1)(b) before an election can be declared void. In *Lalsing Kesharsing Rehwar v. Vallabhdas Shankerlal Thekdi and others*, A. I. R. 1967 Gujarat 62. Miabhov, J. rejected an argument that an enquiry under section 123 is of a quasi criminal nature but the enquiry which is made under clause (b) of sub-section (1) of section 100 of the Act enjoining the determination of the question of consent of a candidate or his election agent does not partake of that character but is more or less an enquiry of a civil nature for the purpose of determining the civil question as to whether the election is valid or void. The Court did not agree with the distinction that was sought

to be made. It is pointed out, there is no doubt that under the Act, the proof of the consent of a candidate for the commission of the corrupt practice would not only lead to the consequence of the election being declared void, but would also lead to the penal consequences, such as disqualification prescribed by section 141 of the Act. In determining the question of consent under section 100 sub-section (1) clause (b) of the Act, the same standard of proof is necessary to be enforced as is required to be enforced for the purpose of determining the question of corrupt practice under section 123 of the Act.

As pointed out in Biswanath's case, it is true that the consent is to be inferred from the circumstances and it may be direct or indirect. But the consent is a question of fact which will have to be established by the petitioner before he gets relief under section 100. If it can be established from the circumstances that the candidate had knowledge of the fact that an article was going to be published in a newspaper and that the article contained certain imputations against the personal conduct of another candidate and if he did not take any steps to stop publication, his consent to the publication may be inferred. But from the fact that he had knowledge of the contents subsequent to its publication, no duty is cast on him to go and publish some repudiation of the allegations contained in the publication. The consent, so as to make the act of a third party as the act of the candidate, should be in respect of the act of the third party; the knowledge which might have legitimately led to the inference of consent would be the knowledge of the fact that it was going to be published. Any subsequent knowledge of the contents of the publication cannot be relevant for the purpose of determining the consent of the candidate prior to the publication.

This principle of necessity of prior knowledge before consent is presumed is approved by Desai, J. in Election Petition No. 1 of 1967 above referred to.

That this is a normal requirement when consent is required is also evident from the observations of Jessel, M. R. in *Ex parte Ford*. In re, *Caughey*. 1876 1 Chancery Division 521. While considering the provisions of English Bankruptcy Act at page 528 the Master of the Rolls observed: "The words used in the Act are consent and permission. Those words imply knowledge." You cannot consent to a thing unless you have knowledge of it.

In the case before me, there is no material evidence imputing knowledge of these specific publications to respondent No. 1 before they were published in the respective issues of Maratha.

The cartoon (Ex. X-27) under the heading "Capitalism" was published in the issue of Maratha dated January 18, 1967 to comment upon a report of the interview of respondent No. 2 published in the issue of Times of India dated January 16, 1967 (Ex. 147). At this interview respondent No. 2 expected to collect from industrialists about a crore of rupees for the election fund of the Congress party. It was this statement which was sought to be publicly criticised by this cartoon published on January 18, 1967. The time between the publication in the Times of India and the publication of the cartoon is so short that one will not ordinarily expect respondent No. 1 to have any prior knowledge thereof before publication.

So also, the cartoon and the poem (Ex. X-16 published in the issue of Maratha dated December 31, 1966) were published and written to publicly criticise the speech made by respondent No. 2 before the Commerce Graduates' Association and a report of which appeared in the issue of Indian Express dated December 30, 1966 (Ex. 121). In this report respondent No. 2 is reported to have said that he would like a ban even on pig slaughter because Muslims do not eat pork. Respondent No. 2 has given evidence that he has not been properly reported in this news item. The fact, however, remains that both the cartoon as well as the poem (Ex. X-16) were directed against this report published in Indian Express dated December 30, 1966. Ex. X-16 is published only on the following day, i.e., December 31, 1966. This short interval of time will go to show that respondent No. 1 could not have any prior knowledge of their publication.

The publication (Ex. X-25) describing respondent No. 2 as the agent of American capitalists purports to be a report of a speech alleged to be made by S. A. Dange and the publication of the news item (Ex. X-32) describing respondent No. 2 as the hired agent of America purports to be a report of a speech made by Acharya Atre. These are ordinary news items and how prior knowledge of such publications cannot be imputed to respondent No. 1.

The allegation about changing of ballot boxes is published in the issue of *Maratha* dated February 1, 1967 (Ex. X-23). This purports to be a report of a speech made only on the previous day, i.e., on January 31, 1967. The evidence shows that meeting went on till late at night. Thus there is no time left to impute knowledge for such a publication to respondent No. 1.

The description of respondent No. 2 as Najeebkhani of Maharashtra in Ex. X-24 is as a result of an article written by S. M. Purkar. In the very body of the article Purkar is alleged to have described respondent No. 2 as the Najeebkhani of the political and economic interest of Maharashtra. It is difficult to see how respondent No. 1 can be imputed prior knowledge of such a publication.

Same is the position with regard to the report of the press interview given by Jagadguru Shankaracharya. It purports to be a report of what Jagadguru Shankaracharya said at the press conference. This is nothing else but a mere news item.

As regards the other publications also, there is no evidence to show that respondent No. 1 had prior knowledge of their contents before they were published.

Thus even if these publications are regarded as corrupt practices committed by Atré as the agent of respondent No. 1, there is no evidence to establish that they were committed with the consent of respondent No. 1. By reason of these publications by Atré in his daily *Maratha*, the election of respondent No. 1 cannot be declared void.

The question then for consideration is whether the election of respondent No. 1 can be declared void having regard to the provisions of section 100(1)(d)(ii) which says:

100. "Grounds for declaring election to void:--

1. Subject to the provisions of sub-section (2) if the High Court is of opinion--

(a)

(b)

(c)

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected--

(i)

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent,

(iii)

(iv)

the High Court shall declare the election of the returned candidate to be void."

This provision requires that the High Court shall declare the election of the returned candidate to be void if (1) the result of the election, in so far as it concerns a returned candidate has been materially affected, (2) by a corrupt practice committed in the interests of the returned candidate, (3) by an agent other than his election agent. The last two requirements of this sub-section are fulfilled. I have already held that having regard to the evidence on record, Acharya Atré is the agent of respondent No. 1 as that term is understood under the election law. There can also be no doubt that the various publications in *Maratha* were in the interest of respondent No. 1. In fact in one of the last publications on the eve of the polling day, the leading article (Ex. X-37) is concluded with a passage: "Samiti has to perform the three-fold task of ending the corrupt Congress régime, liquidating Sadobashahi (dictatorship of Sadoba) which is spreading the reign of Goondaism and striving unceasingly for the welfare of the four crore people of Maharashtra. We request all with folded hands that to ensure success to the Samiti in this task, all the voters should with their eyes closed cast their votes tomorrow for all the Samiti candidates and make them successful."

The point for determination is whether the result of the election in so far as it concerns respondent No. 1, the returned candidate, has been materially affected. How that requirement can be fulfilled at trial in an election petition is laid down

by the Supreme Court in *Vashist Narain Sharma v. Dev Chand and others* (1954-55) 10 Election Law Reports 30 A.I.R. 1954 Supreme Court 513. This decision related to a case of improper acceptance of a nomination of one of the unsuccessful candidates and it was decided under the provisions of the Act as they existed prior to its amendment by Central Act XXVII of 1956. At that time the provisions of section 100(1)(c) were, so far as the present case is concerned, similar to the provisions of section 100(1)(d)(ii) as it exists today. This case lays down that the words "the result of the election has been materially affected" in this clause indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by a proof of the fact that the votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate. It was pointed out that the language of section 100(1)(c) [corresponding to present section 100(1)(d)(ii)] clearly places the burden of proving that the result of the election has been materially affected on the petitioner who impugns the validity of the election. In that respect there was a departure from the provisions of the English Act (the Ballot Act 1872 section 13). It is also pointed out that it is impossible to accept the ipse dixit of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. The question is one of fact and has to be proved by positive evidence. If the petitioner is unable to adduce evidence, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand. The language of section 100(1)(c) is too clear for any speculation about possibilities. The Supreme Court was conscious of the position that such result may operate harshly upon the petitioner seeking to set aside the election but pointed out that neither the Tribunal nor the Court is concerned with the inconvenience resulting from the operation of the law. How the state of things can be remedied is a matter entirely for the legislature to consider.

This principle is followed by the Madhya Pradesh High Court in *Inayatullah Khan v. Diwanchand Mahajan and others*, (1958) 15 Election Law Reports 219. This also was a case of improper acceptance of the nomination paper. In this case also, the hardship on the part of the petitioner in discharging the onus was again emphasised and at page 236 it is pointed out: We cannot help expressing with regret that the law is as it is. It is quite obvious that the law should not contemplate the doing of an impossible task by a candidate who is contesting the election of a returned candidate on such grounds. The law should provide for a burden of proof which would be capable of being humanly discharged and not a burden which no person can hope to discharge. We hope that the Legislature will intervene and deal with this question as their Lordships of the Supreme Court have already expressed.

The test laid down by the Supreme Court has been thereafter followed by Kerala High Court in *Abdul Majced (Mcera Sahib) v. Bhargavan (Krishnan) Member, Legislative Assembly and others*, A.I.R. 1963 Kerala 18 [a case of a corrupt practice under section 123(4)]; by the Patna High Court in *Badri Narain Singh and others v. Kamdeo Prasad Singh and another*, A.I.R. 1961 Patna 41 [a case of a corrupt practice under section 123(5)]; and by the Mysore High Court in *Sangappa Andanappa v. Shivamurthiswamy Siddeppalyaswamy*, A.I.R. 1961 Mysore 106 (a case of defective list of polling stations being furnished to one of the candidates).

The contention on behalf of the petitioner is that the strict requirements of the test so laid down in *Vashistha's* case are considerably modified in a later decision of the Supreme Court and the Court or the Tribunal can, having regard to the facts of a particular case, presume that the result of the election has been materially affected and need not insist upon the fact of the result being materially affected being established by specific evidence. Reference in this behalf was made to the decision of the Supreme Court in *Surendra Nath Khosla and another v. Dalip Singh and others*, A.I.R. 1967 Supreme Court 242. This was a case of improper rejection of a nomination paper of one of the candidates. The Supreme Court has in this case held that in such a case it may be presumed that the result of the election has been materially affected. It pointed out: Though the words of section 100, as it stood before the amending Act 27 of 1956 are in general terms with equal application to the case of improper acceptance, as also of improper rejection of a nomination paper, case law has made a distinction between the two classes of cases. There is a presumption in the case of improper rejection of a nomination paper that it has materially affected the result of the election. Apart from the practical difficulty, almost the impossibility,

of demonstrating that the electors would have cast their votes in a particular way, that is to say, that a substantial number of them would have cast their votes in favour of the rejected candidate, the fact that one of the several candidates for an election had been kept out of the arena is by itself a very material consideration. Cases can easily be imagined where the most desirable candidate from the point of view of electors and the most formidable candidate from the point of view of the other candidates may have been wrongly kept out from seeking election. On the other hand, in the case of an improper acceptance of a nomination paper, proof may easily be forthcoming to demonstrate that the coming into the arena of an additional candidate has not had any effect on the election of the best candidate in the field. The conjecture therefore is permissible that the legislature realising the difference between the two classes of cases has given legislative sanction to the view by amending section 100 by the Central Act 27 of 1956, and by going to the length of providing that an improper rejection of any nomination paper is conclusive proof of the election being void. This case, therefore, shows that in case of an improper rejection of a nomination paper, the Court can presume that the result of the election has been materially affected, but in the case of an improper acceptance of a nomination paper, the Court has reaffirmed the tests that are laid down in Vashist's case. The test laid down in Vashist's case is not modified at all in the present case in case of an improper acceptance of a nomination paper.

The argument on behalf of the petitioner is that where the Court is dealing with the impact of false propaganda at the election, it is completely impossible to have the type of evidence which is required in Vashist's case, that in view of the impossibility of bringing evidence, a presumption should be raised as it was done in Khosla's case in case of an improper rejection of a nomination paper; that the test should be: is the corrupt practice intrinsically substantial or real? that if the answer to this question is in the affirmative, the result must be held to be materially affected. It is submitted that the Court can consider what is the object of the person committing the corrupt practice or whether resort to corrupt practice was temporary or passing or was it persistent or prolonged or what was the nature of the medium of publication selected or what will be the unmistakable tendency of the publication. The court should bear in mind the fundamental rule that one who tends to effect the result of the election cannot be easily heard to say that his plan has not succeeded. In case of persistent propaganda, presumption should be drawn that the result is materially affected.

The above submission simply proceeds upon the hardship of the petitioner in proving his case but is not warranted or justified having regard to the provisions statute as they exist today. It appears from clause (d) of sub-section (1) of section 100 that even after the amendment of the Act by the Central Act 58 of 1958, the case of improper acceptance of a nomination paper and the case of a corrupt practice committed by an agent other than his election agent, in the interest of the returned candidate stand on the same footing and are governed by the same principles. In Vashist's case in the case of improper acceptance of a nomination paper, the Court held that the requirement of the result of the election being materially affected should be established by proof of the fact that the votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate. Such a test, no doubt, operated harshly upon the petitioner, but the remedy for removing such a grievance lay entirely with the legislature. The section clearly places the burden of proving that the result of the election has been materially affected on the petitioner who impugns the validity of the election. In Khosla's case the rigour of the test laid down in Vashist's case has not been modified in case of improper acceptance of a nomination paper. In fact in Khosla's case the test laid down in Vashist's case has been reaffirmed so far as a case of improper acceptance of a nomination paper is concerned. It is there held that a case of improper rejection of a nomination paper stood on a different footing and in that case it has to be presumed that the result of the election has been materially affected. Regard was also had to the legislative history, viz., the amendment of the Act by Central Act 27 of 1956 because after that amendment, election was automatically liable to be declared void if a nomination paper was improperly rejected. Under the statute as it exists today, under sub-clauses (i) and (ii) of clause (d), the case of improper acceptance of a nomination paper and the case of a corrupt practice committed by an agent in the interests of the returned candidate stand on the same footing. Just as there is no scope for raising a presumption in the case of an improper acceptance of a nomination paper, so also, there is no scope for raising a presumption as sought to be suggested in a case of a corrupt practice committed by an agent.

In the course of his arguments, Mr. Jethmalani on behalf of the petitioner compared the provisions of section 101 and those of section 100 sub-section (1) clause (d) and submitted that the onus in these two cases cannot be equated together. There is, no doubt, some difference between the language of these two provisions. In the present case, the onus on the petitioner is to establish that the result of the election so far as it concerned the returned candidate has been materially affected. This phrase has been interpreted in Vashist's case and in order to establish his case, the petitioner has to prove this fact in the manner indicated in Vashist's case. The language of section 100(1)(d) is too clear for any possibility about speculation.

The question then to be considered is: Has the petitioner discharged the onus of establishing that the result of the election has been materially affected by reason of the corrupt practice committed by Acharya Atre as the agent of respondent No. 1? To discharge this onus, he has relied upon the same factors which are referred to while considering the issue whether the statements are reasonably calculated to prejudice the prospects of respondent No. 2's election. He pointed out that the medium selected is a newspaper which has a fairly wide circulation, that there has been persistent propaganda right from December 12, 1966 to the eve of the polling day, that a number of topics are dealt with in these publications and sometimes some of these publications repeat the same theme. He also referred to the specific pieces of evidence relevant on the effect of each one of these publications.

The petitioner in his evidence while deposing about the allegation of 15 lacs given to Jack Sequeira in connection with Goa poll has stated that he went for canvassing for respondent No. 2 from house to house. Thousands of persons whom he contacted expressed their opinion of feeling to him because of this publication. He said that he could not trace those people now and he did not remember their names. He slightly modified this evidence in cross-examination and said that he knew some of such voters personally and he knew where they reside. He said he would be able to give the names of only one or two persons who are the admirers of respondent No. 2 and if he made effort, he could give also the names of one or two more persons. He remembered the names only of one Mahajan and one Parulekar, both residing at Girgaum. Referring to this item respondent No. 2 said that the object of this allegation was obvious. They were made deliberately and mischievously with the object of prejudicially affecting his chances at the election and for promoting the prospects of election of respondent No. 1. They affected his election immensely. Thousands of voters were carried away by this propaganda. These statements have damaged his prospects at the election because the situation at the time when these statements were made was so tense that it could not have done anything but affecting his election.

The petitioner has also given some evidence as regards the effect of the publication in associating his (respondent No. 2's) name with Shiv Sena. The petitioner said that because of this propaganda, non-Marathi speaking persons did not vote for respondent No. 2 as they hated such activities of Shiv Sena and association of respondent No. 2 with the activities of Shiv Sena.

The petitioner and respondent No. 2 have also given evidence about the statements made by Jagadguru Shankaracharya and published in the issue of *Muratha* (Ex. X-15).

The petitioner said that about more than 1000 female electors were much agitated upon the statement made by Jagadguru Shankaracharya that respondent No. 2 was a hypocrite and had done nothing to impose the ban on cow slaughter. He, however, did not know the name of any one of these female electors. They reside at various places situated in Bombay South Parliamentary constituency. He has not made any efforts to trace any one of them. He will not be able to trace any one of such female electors.

Respondent No. 2 said that the publication of such false statements by Jagadguru Shankaracharya created a doubt in the minds of the electors and affected his chances at the election as he had no time to undo the harm done by the making and publication of these statements. The making and the publication of these statements had done immense harm to his prospects at the election and that respondent No. 1 was the beneficiary of such statements. He said that at least 50,000 of the electors must not have voted for him because of such statements made by Jagadguru. Gujaratis, Jains and North Indians

were the bulk of the voters from Bombay South Parliamentary constituency. In his cross-examination he said that figure of 50,000 was an underestimate.

Reliance was also placed upon the publication of a news item in Maratha dated February 18, 1967 (Ex. X-19). In this news item it is reported that after Jagadguru Shankaracharya called respondent No. 2 a hypocrite yesterday, respondent No. 2 has lost whatever little name he had in Bombay. It has now become certain that respondent No. 2 is not going to get the support of Gujaratis, Jains and North Indians. Apart from producing this exhibit, no other attempt has been made to prove the truth of the contents thereof. The argument is that since Maratha is published by Acharya Atre, this news item may be regarded either as an admission by Atre or as an admission by a reporter of Maratha who may be regarded as his sub-agent. This Ex. X-19 stands on the same footing as the other exhibits—Ex. X-96 and Ex. X-93. In respect of these exhibits, similar contentions were urged and they are not accepted by me. For the same reasons, it is not possible to take the view that the contents of Ex. X-19 should be regarded as proved merely by the production of the newspaper Maratha.

As regards the other publications it is generally said by respondent No. 2 that the various false statements made by Atre in Maratha were made with a view that his chances at the election might be damaged and those of respondent No. 1 might be enhanced and that they have in fact damaged his prospects at the election.

It is also urged that the parliamentary seat from Bombay South constituency was a traditionally Congress constituency and in the earlier elections respondent No. 2 was elected therefrom by a predominant majority, that if 15,000 voters defected, the result will be completely different in Bombay South Parliamentary constituency. It is said that out of the many electors who did not turn out to vote, there might be many who did so as a result of the pre-paganda in these publications.

This evidence is rather general and in some manner vague. It has to be considered and weighed along with the views expressed by respondent No. 2. While the counting was going on after the poll, a statement then made by him is reported in Free Press Journal dated February 22, 1967 (Ex. 126). Respondent No. 2 then said that he expected to win the Bombay South Parliamentary seat by a margin of over 50,000 votes. When his attention was drawn to this statement, he said that at that stage one did not show pessimism and he was then not sure because the magnitude of the damage was to be revealed only afterwards.

As against these factors relied upon by the petitioner and respondent No. 2, there are certain other factors pointed out on behalf of respondent No. 1 which are likely to affect the actual result of the election against respondent No. 2.

In or about the last week of December 1966, respondent No. 2 addressed a meeting organised by Commerce Graduates' Association. In the course of his speech at this meeting, he said that the cow should not be killed because crores of Hindus do not want her to be killed. He also then said that the pig should not be killed as it was regarded as a dirty animal and Prophet Mahomed had directed that pork should not be eaten because of that reason. In the course of his speech he also said that the protagonists of the ban were demanding protection not only for the cow but also for the cow's family including cow's mother and father, son and daughter, sister and brother and the husband. Such expression of views for the cow's family, if known by the electors and especially orthodox Hindu electors, may prejudice their minds against respondent No. 2 who said these things in the course of his speech.

The second circumstance relied upon on behalf of respondent No. 1 relates to the views of respondent No. 2 on the issue of merger of Goa with Maharashtra. It is in fact the evidence of the petitioner himself that Maharashtrians want that Goa should be a part of the State of Maharashtra. No Maharashtrian desired that Goa should retain its status as a part of the centrally administered area. The petitioner has also given some evidence as regards the views of respondent No. 2 on this problem. He did not know the mind of respondent No. 2 as a political leader. Respondent No. 2 did not say whether it should merge with Maharashtra or not. He advocated that the wishes of Goans should be ascertained and Goans should be given a free choice to decide whether it should merge with Maharashtra or not. He supported the view of the Congress High Command. These views should naturally be the views of an individual who had full faith in democracy, but it is difficult to judge the impact of such views on people

who may apply their mind to the problem from a narrow point of view or out of parochial outlook. It is a factor to be taken into account whether Maharashtra electors while exercising their franchise at the election will be affected by such views of respondent No. 2.

The third circumstances suggested on behalf of respondent No. 1 is that even long prior to the polling day, there was a general feeling amongst prominent Congressmen including respondent No. 2 that the Congress party was not as popular with the electorate as it was in the past. Reference is made to the report of a press interview given by respondent No. 2 at New Delhi and published in Times of India dated January 16, 1967 (Ex. 147). This report shows that respondent No. 2 at one time made a statement in Bombay that the Congress majority at the centre would be reduced in the next poll. He elaborated that statement at the press interview at New Delhi. He was asked a question sometime had passed since he said the Congress would lose 25 of its seats, did he still subscribe to that view? His answer was that was his general observation. He was giving rough estimate that the present strength of 375 in Lok Sabha may be reduced to 300. He explained that the Congress had been long in power in a democracy, nobody liked one party to be long in power. Such feeling led to a tendency towards smaller majorities. This showed that as a politician, respondent No. 2 felt that at the election, the Congress majority was likely to be reduced. His evidence also shows that in the 1967 election some of the prominent leaders of the Congress party were defeated. Mr. Atulya Ghosh from Bengal was defeated. Mr. Kamraj from Tamilnad was also defeated. He also said that in the last election, Congress suffered quite a few unexpected defeats. He said that such defeat was due either to local or some other reason. But it could not be said that it was due to discontent with the Congress policy as such. His evidence also showed that Mr. Subramaniam and Mr. Sachin Chowdhary, two of the Ministers in the Central Cabinet, were also defeated at the polls. He was asked whether his defeat at the election was a part of the Congress defeat because of the people's discontent with unemployment, corruption, high prices, etc. He replied that he did not agree with that view. He said that during the period of the election, quite a few persons left the Congress party.

The fourth circumstance relied upon on behalf of respondent No. 1 was that a statement made by him showing his association with Shiv Sena was reported in the issue of Free Press Journal dated February 6, 1967 (Ex. 153). This report states that respondent No. 2 advised leaders of Shiv Sena not to indulge in activities that would scare the people, that he called the leaders of Shiv Sena privately and told them accordingly, that it was true that this organisation was supported by (sic-supporting) Shri S. G. Barve and him but then he could not stop any one lending support to the Congress in the elections. This was the reason why people believed that he was supporting this organisation. According to respondent No. 2, this is a substantially correct report of what he said except that he did not call the leaders of Shiv Sena privately.

One of the factors to be taken into account is whether publication of such a report in Free Press Journal is likely to prejudice the non-Maharashtrian voters from the Bombay South Parliamentary constituency against respondent No. 2.

Lastly, it was pointed out on behalf of respondent No. 1 that many prominent leaders of the All India Congress Party came to participate in the election campaign in Bombay, but they did not address any meeting within the area of Bombay South Parliamentary constituency for respondent No. 2. It appears from the evidence of the petitioner that Mr. Morarji Desai and Mr. Y. B. Chavan did come to Bombay to participate in the election campaign, they addressed some meetings in Bombay but not within the limits of Bombay South Parliamentary constituency.

These are the relevant factors which have to be taken into consideration while judging whether the result of the election was materially affected by the publication of the various impugned statements in Maratha. It is difficult to say that amongst the various factors relied upon by either side, which factor acted upon the mind of an elector and in what way. The casting of votes at an election depends upon a variety of factors. It is not possible for anyone to predicate how many and which proportion of voters will vote for the one or other of the candidates if such impugned statements were not published in Maratha. It must be recognised that the petitioner in such a case is confronted with a difficult situation. It is, however, not possible to relieve him of the duty imposed on him by section 100 (1) (d) (ii) and hold without evidence that the duty

has been discharged. The petitioner in the present case has failed to adduce satisfactory evidence to enable the Court to find that the result of the election has been materially affected by reason of the publication of the impugned statements in Maratha and the petitioner has failed to discharge the burden cast on him. The inevitable result of such a situation is that the Court cannot interfere in his favour and cannot declare the election to be void.

The other instance of the corrupt practice committed by a person other than respondent No. 1 is in relation to the statements made by Jagadguru Shankaracharya at a press conference held in Bombay on February 16, 1967. This corrupt practice is pleaded in paragraph 2E of the petition. It is averred that on the eve of election, viz., about February 16, 1967, Jagadguru Shankaracharya of Puri arrived in Bombay, that he had no other legitimate business in Bombay except to influence the course of elections against respondent No. 2, that at public meetings in Bombay held at Shivaji Park on February 16, 1967 in the evening and subsequently to the press correspondents, the said Jagadguru stated that respondent No. 2 had a hand in the incidents which took place in Delhi on November 7, 1966 and in particular arson committed on the house of the Congress President and injuries inflicted on the inmates of that house. In paragraph 2F of the petition it is pleaded that at about the same time, Jagadguru published false statements insinuating that the second respondent only pretended to have respect for the cow and that he had done nothing whatsoever to discourage cow slaughter. The report of the statements made by Jagadguru in newspaper shows that Jagadguru condemned respondent No. 2 as a hypocrite. These statements by Jagadguru are totally false, that they gravely impaired the personal character and conduct of respondent No. 2 and prejudiced the prospects of his election and that this constituted a corrupt practice within the meaning of section 123(4) of the Act. Pursuant to the order dated September 17, 1967, the petitioner has by way of amendment after paragraph 2J(iv) *inter alia* pleaded the submission that Jagadguru Shankaracharya was the agent of respondent No. 1 and the publication made by him was in the interest of respondent No. 1 and with his consent, that the same materially affected the result of the election to the detriment of respondent No. 2 and the benefit of respondent No. 1.

There is no evidence in the present case as regards the statements alleged to be made by Jagadguru Shankaracharya at public meetings in Bombay held at Shivaji Park on February 16, 1967. The evidence, however, showed that a press conference was called by Jagadguru Shankaracharya at Loyalka Estate in Bombay and the report of this press conference appeared in the issue of Free Press Journal dated February 17, 1967 (Ex. 79) and the issue of Blitz dated February 18, 1967 (Ex. 80).

The report in Free Press Journal (Ex. 79) shows that at the press conference Jagadguru made a bitter attack on the Congress party for not making any serious effort to ban cow slaughter though the Congress held extreme majority in the country. He said that he was not interested in election or politics, that his recent fast was not an election stunt nor had he come to Bombay to take part in the election campaign. At this press conference Jagadguru made a series of complaints and accusations against respondent No. 2 evoking an immediate rejoinder from him later in the day. Answering a question put to him on the Sadhu demonstration in Delhi in November, Jagadguru said that he agreed with Shri Madhu Limaye's allegation that respondent No. 2 and Shri Atulya Ghosh were behind the incidents which included the burning of Congress President Kamraj's house. In the course of his press conference he also said that respondent No. 2 has not been sincere in his efforts to bring about a ban on cow slaughter. He went to the extent of accusing respondent No. 2 of taking advantage of the movement.

In Blitz (Ex. 80) the report of the interview appears thus: His Holiness Jagadguru Shri Shankaracharya . . . denounced respondent No. 2, the Bombay Congress boss, as a hypocrite . . . He was asked what he thought about the Bombay Congress boss's threat to leave public life if ban on cow slaughter was not introduced. His Holiness said that "he is a hypocrite" on whose words he had no faith. The Jagadguru also accused respondent No. 2 and Atulya Ghosh of being behind the trouble that led to bloodshed on November 7, outside Parliament. His Holiness agreed with Madhu Limaye who alleged that respondent No. 2 and Ghosh had engineered the Sadhu troubles. He added that he had enquired into the allegations and found them to be correct.

The correctness of these reports in the Free Press Journal and the Blitz is proved on behalf of the petitioner by examining Chandrakant Desai (Ex. 78), a

reporter of the Free Press Journal who covered this press conference. Chandrakant Desai has stated that this Press conference was held at Loyalka Estate, Chowpaty Band Stand and he was present there. The report in the Free Press Journal (Ex. 79) is a correct report of what Jagadguru Shankaracharya said at the press conference. That report was published in the Free Press Journal in view of the report submitted by him. He also said the report in 'Itz (Ex. 80) is also a correct report of what Jagadguru Shankaracharya said at the press conference. There is no serious cross-examination of Chandrakant Desai on this part of his testimony in connection with the press conference held by Jagadguru Shankaracharya. What is stated in the report in Free Press Journal (Ex. 79) and the report in Blitz (Ex. 80) is, therefore, a true and accurate version of what Jagadguru Shankaracharya said at this press conference. The report of this press conference was published in the issue of Maratha dated February 17, 1967 (part of Ex. X-15) and in the issue of Indian Express dated February 17, 1967 (Ex. 125). The correctness of the statements in these reports is not independently established.

As regards these statements made by Jagadguru Shankaracharya, the contention on behalf of respondent No. 1 is that these statements do not amount to a corrupt practice within the meaning of section 123(4) because Jagadguru Shankaracharya was not the agent of respondent No. 1, that Jagadguru Shankaracharya did not publish the statements made by him at the press conference with the consent of respondent No. 1, that it is not established that Jagadguru Shankaracharya knew those statements to be false or did not believe them to be true. The further contention on behalf of respondent No. 1 was that these statements by Jagadguru Shankaracharya cannot be a ground for declaring the election of respondent No. 1 to be void under section 100(1)(b) because the corrupt practice, if at all committed by Jagadguru Shankaracharya, is not committed with the consent of respondent No. 1 or his election agent. The further contention is that this cannot be a ground for declaring an election to be void under section 100(1)(d)(ii) because it is not established that the result of the election is materially affected by commission of such corrupt practice on the part of Jagadguru Shankaracharya. In respect of the statement describing respondent No. 2 as a hypocrite, there is a further submission that such a statement by Jagadguru is a mere expression of opinion and is not in relation to the personal character or conduct of respondent No. 2 but is a public criticism of respondent No. 2 of his acts in respect of a matter of public importance.

A statement made or published by Jagadguru Shankaracharya will be a corrupt practice under section 123(4) only if it is first established that Jagadguru is the agent of respondent No. 1 or has made the statement at the press conference with the consent of respondent No. 1 or his election agent. It is not the case of the petitioner in this petition that these statements were made by Jagadguru Shankaracharya with the consent of the election agent of respondent No. 1. The contention on behalf of the petitioner is that Jagadguru Shankaracharya is the agent of respondent No. 1 and he has made these statements at the press conference with the consent of respondent No. 1.

Only three circumstances are relied upon on behalf of the petitioner to establish the fact that Jagadguru Shankaracharya is the agent of respondent No. 1 and/or has made the statement with the consent of respondent No. 1. The first circumstance is that respondent No. 1 made a public statement condemning arrest of Jagadguru Shankaracharya, that the Secretary of Jagadguru Shankaracharya thanked respondent No. 1 for his statement and that news about this letter of thanks were published in the issue of Maratha dated December 16, 1966 (Ex. X-41). The second circumstance is that in the issue of Maratha dated February 9, 1967 (Ex. X-18), Maratha published a news item that Jagadguru Shankaracharya was coming to Bombay to carry on propaganda against the Congress and especially against respondent No. 2. The third and the last circumstance relied upon is that in the month of January 1967, respondent No. 1 addressed two meetings held under the auspices of Sarvadaliya Goraksha Mahabhiyan Samiti and that at one of these meetings, he expressed the same sentiment which was expressed by Jagadguru Shankaracharya, viz., to strike the enemy at its weakest spot in accordance with the philosophy of Chanakya. Apart from these circumstances, no other factor or circumstance is relied upon on behalf of the petitioner to contend that Jagadguru Shankaracharya is the agent of respondent No. 1 or that what he said at the press conference was done by him with the consent of respondent No. 1.

The evidence of respondent No. 1 shows that in his capacity as the Chairman of the Civil Liberties Union, he made a statement condemning the arrest of

Jagadguru Shankaracharya and stated that he should be released. Sometime thereafter the Secretary to Jagadguru Shankaracharya sent a post card to his office stating that Jagadguru thanked him for what he stated. This post card was received by him at his office address. The news about the receipt of this post card appeared in the issue of Maratha dated December 16, 1966 (Ex. X-41), but he was unable to explain who gave information about this post card to newspaper Maratha and how news about this post card came to be published therein.

In the issue of Maratha dated February 9, 1967 (Ex. X-18) it is reported that Jagadguru was going to come to Bombay during the next fortnight for carrying on propaganda against the Congress, especially against respondent No. 2 and was going to place before the public the action taken by respondent No. 2 during the fast undertaken for banning the cow slaughter. The report further states that Jagadguru was going to start a round of propaganda against the Congress on a large scale through southern or northern parts of Bombay and it is learnt from his close associates that it is probable that the Bombay Pradesh Congress Committee will hatch a plot to thwart this plan. There is no evidence to show how such a news item came to be published and whether what is stated therein is correct or incorrect. Respondent No. 1 in his evidence says that he came to know of this news item after this election petition was filed, and he did not know how Maratha published this information.

At the press conference what Jagadguru said is proved by the evidence of Chandrakant Desai. Jagadguru said that he was not interested in elections or politics, that his recent fast was not an election stunt, nor had he come to Bombay to take part in the election campaign. In view of these statements made by Jagadguru, a report in Maratha (Ex. X-18) can have no evidentiary value whatsoever, more so, because no attempt has been made to prove the truth of the statements therein made.

As regards the third circumstance, respondent No. 1 in his evidence stated that he addressed two meetings held under the auspices of Sarvadaliya Goraksha Mahabhiyan Samiti. These meetings were addressed by leaders of all parties. He did not remember to have said at this meeting that respondent No. 2 had hurt the religious sentiments of the Hindus. When he went to the platform, he was given a cutting of Indian Express (Ex. 121) wherein respondent No. 2 made reference to son of cow, husband of cow and so on. When this cutting was shown to him, he said that it did not matter whether the agitation was the election stunt, one must exploit the difficult situation of the opponent. A report of what he said is correctly reported in the issue of Sunday Standard dated January 1, 1967 (Ex. X-86). The reports of the press conference in Maratha (Ex. X-15) and in the Indian Express (Ex. 125) also show that at the press conference, Jagadguru is alleged to have stated that if the Congress Government can be changed by means of election free of corrupt practice, it should be changed, but if this cannot be done, then this Government must be changed by means of Bharatiya politics, that is to say, by adopting Chanakya's policy.

29th January, 1968:

These circumstances do not establish the case of the petitioner that Jagadguru Shankaracharya is the agent of respondent No. 1 or that he made the statements at the press conference with the consent of respondent No. 1. They do not throw any light at all on the question of agency or consent.

The evidence of respondent No. 1 shows that he had no contact with Jagadguru Shankaracharya. He said in his evidence that he has heard of the name of Jagadguru Shankaracharya, but he was not personally acquainted with him. He has not met him at any time. He came to know that Jagadguru was likely to come to Bombay after he was released. He did not attend any meeting or conference addressed by Jagadguru. He merely glanced through a report of the press conference of Jagadguru which was published in Indian Express. He said that none of the statements made by Jagadguru were with his consent or knowledge nor were they inspired by him. He was unable to say whether these statements of Jagadguru were made for his benefit. He plainly stated that Jagadguru was not his agent at any time. This evidence given in chief is not challenged in cross-examination and must be accepted as true.

Even the evidence of respondent No. 2 shows that he is only surmising when he deposed that Jagadguru Shankaracharya is the agent of respondent No. 1. Even in his evidence in chief he said that he did not know whether Jagadguru was a party to a conspiracy to make propaganda against him, but he merely

guessed that Jagadguru was a party to such a conspiracy. The reason that he gave for such a conjecture was that it was reported in newspapers that he came to Bombay to tell the voters what he (respondent No. 2) was so far as the question of ban on cow slaughter was concerned. In his cross-examination he said that he deposed that Jagadguru came to Bombay to carry on election propaganda against the Congress and himself because it was so reported in Maratha. He was aware that in the newspaper it was reported that Jagadguru stated at the press conference that he had not come to Bombay to carry on election campaign or for political purpose but had come to Bombay for the Aradhana ceremony of his Guru. He plainly admitted that it is not his case that the statement made by Jagadguru that he did not come to Bombay for election propaganda or for political purpose is a false statement. He, however, added that what Jagadguru said actually damaged his prospects at the election. Respondent No. 2 also stated in his evidence that he had not come into personal contact with Jagadguru and so far as he knew, there was no occasion for Jagadguru to have personal animus against him. After his attention was drawn to the actual statements made by Jagadguru at the press conference, he did say that he might not have come to Bombay to carry on election campaign, but what he said improved the prospects of the election of respondent No. 1 and damaged his prospects at the election. This evidence of respondent No. 2 shows that he merely guessed in describing Jagadguru as the agent of respondent No. 1 simply because of a report in a newspaper. He has no other material to base his surmise or conjecture.

The above discussion shows that the petitioner has failed to establish that Jagadguru is the agent of respondent No. 1 as that term is understood under the election law or made the statements at the press conference held in Bombay on February 16, 1967 with the consent of respondent No. 1. It is not even established that respondent No. 1 even knew what Jagadguru was likely to say at the press conference. It is, therefore, unnecessary to consider the other contentions of respondent No. 1 in relation to the statements made by Jagadguru Shankaracharya. The petitioner has not established in the present case that a corrupt practice was committed by Jagadguru Shankaracharya.

There remains for consideration the corrupt practice under section 123(3) by use of or appeal to cow as a religious symbol for furtherance of the prospects of the election of respondent No. 1 or for prejudicially affecting the election of respondent No. 2. In paragraph 2F of the petition while referring to false statements made by Jagadguru Shankaracharya at the press conference, it is also pleaded that cow was used as a religious symbol for the furtherance of the prospects of the election of respondent No. 1 or, at any rate, for prejudicially affecting the election of respondent No. 2. However, no particulars are given in respect of such use of or appeal to cow as religious symbol. At the trial of this petition, two instances are relied upon as constituting such a corrupt practice under section 123(3). The first instance relates to the publication of a cartoon stating that "cow is my mother, don't kill her. Pig is my father, don't kill him," and the poem entitled "Wailing of Sadoba, the son of a pig." (Ex. X-16) both published in the issue of Maratha dated December 31, 1961. The second instance of this corrupt practice is by reason of the statement made by Jagadguru Shankaracharya at a press conference in Bombay on February 16, 1967 in the course of which he denounced respondent No. 2 as a hypocrite when he was asked what he thought about respondent No. 2's threat to leave public life if ban on cow slaughter was not introduced.

The contention on behalf of respondent No. 1 is that by this publication of the cartoon and the poem and the statement made by Jagadguru at the press conference no corrupt practice under section 123(3) is committed because (a) cow is not a religious symbol, and (b) use of or appeal to cow as religious symbol is not made for furtherance of the prospects of election of respondent No. 1 or for prejudicially affecting the election of respondent No. 2. The further contention on behalf of respondent No. 1 is that even if this is assumed to be a corrupt practice within the meaning of section 123(3), it is not a ground for declaring the election of respondent No. 1 to be void under section 100(1)(b) because the corrupt practice is not proved to have been committed with the consent of respondent No. 1 or his election agent. Lastly, the contention is that it is not even a ground for declaring the election to be void under section 100(1)(d)(ii) because it is not established that Atre or Jagadguru is the agent of respondent No. 1 or that these corrupt practices were committed in the interests of respondent No. 1 or that the result of the election is materially affected by commission of such corrupt practice.

The relevant part of section 123(3) runs thus:

123: "*Corrupt practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

- (3) . . . the use of or appeal to religious symbols . . . for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

The first point that arises for determination is whether cow is a religious symbol.

In Murray's New English Dictionary (Oxford), various meanings of the word 'symbol' are given. The first meaning given is "the formal authoritative statement or summary of the religious belief of the Christian church or of a particular church or sect, a creed or confession of faith." The second is "a brief or sententious statement; a formula, motto, maxim, occasionally a summary, synopsis." These meanings cannot be applied to the word "symbol" as used in section 123(3) of the Act. The third meaning, which appears to be the one that can be applied, is "something that stands for, represents, or denotes something else (not by exact resemblance, but by vague suggestion, or by some accidental or conventional relation) especially a material object representing or taken to represent something immaterial or abstract, as a being, idea, quality or condition; a representative or typical figure, sign or token." The remaining meanings which do not apply, are "an object representing something sacred. A small device on a coin, additional to and usually independent of the main device or type. A written character or mark used to represent something; a letter, figure or sign conventionally standing for some object, process, etc."

In *Jagdev Singh Sidhanti v. Pratap Singh Daulta and others*, A.I.R. 1965 Supreme Court 183 it is said: A symbol stands for or represents something material or abstract; in order to be a religious symbol, there must be a visible representation of a thing or concept which is religious. In that case the word 'Om' was used on a flag during the election campaign and the contention was that use of 'Om' on the flag in the campaign amounted to commission of a corrupt practice within the meaning of section 123(3). That contention was, however, not accepted. It is pointed out: To 'Om' high spiritual or mystical efficacy is undoubtedly ascribed, but its use on a flag does not symbolise religion, or anything religious.

In *Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji and others*, A.I.R. 1965 Supreme Court 669 a candidate of the Swatantra Party, whose election symbol was star, had issued and distributed pamphlets wherein his election symbol star was described as Dhruva star. The question that arose for consideration was whether by such description and use of the word "Dhruva star" a corrupt practice within the meaning of section 123(3) was committed. The Court held that such a use does not amount to commission of any corrupt practice within the meaning of section 123(3). It is pointed out that the question has to be examined in two branches—whether the symbol used has any special religious significance and whether its inscription on leaflets and pamphlets which were distributed amounted to the use of a religious symbol. It is observed that since Dhruva is not regarded as a deity or a Godhead a reference to him cannot be said to have religious significance even to an orthodox or an illiterate and religiously minded Hindu. It is also pointed out that it is impossible to say that any particular object, bird, or animal could be regarded as a "symbol of the Hindu religion." The basic concept of Hindu religion is that the Supreme Being is in every 'inanimate' object, plant, creature or person, i.e., in the entire creation and that the entire creation is within the Supreme Being. If, therefore, according to the fundamental concept of Hindu religion God or Divinity is the reality or the substance of everything that exists, it would not be possible to say that any particular object is a symbol of the Hindu religion. In this case the Supreme Court points out that a reference to prophets or religions or to deities venerated in a religion or to their qualities and deeds does not necessarily amount to an appeal to the religious sentiment of the electorate. Something more has to be shown for that purpose. If, for instance, the illiterate, the orthodox or fanatical electors are told that their religion would be in danger or they will suffer miseries or calamities unless they cast their vote for a particular candidate, that will be quite clearly an appeal to the religious sentiment of the people. Similarly, if they are told that the wrath of God or of a deity will visit them. If they do not exercise their franchise in a particular way or if they are told that they will receive the blessings of God or a deity if they vote in a particular way, that would be an appeal to the religious sentiment. Similarly, if they are

told that they should cast their vote for a particular candidate whose election symbol is associated with a particular religion just as the Cross is with Christianity, that will be using a religious symbol for obtaining votes. But where, as in the case of the Hindu religion, it is not possible to associate a particular symbol with religion, the use of a symbol, even when it is associated with some deity, cannot, without something more, be regarded as a corrupt practice within the meaning of sub-section (3) of section 123 of the Act. For instance, a particular object or a plant, a bird or an animal associated with a deity is used in such a way as to show that votes are being solicited in the name of that deity or as would indicate that the displeasure of that deity would be incurred if a voter does not react favourably to that appeal, it may be possible to say that this amounts to making an appeal in the name of religion. But the symbol standing by itself cannot be regarded as an appeal in the name of religion. The Supreme Court in this case has pointed out that in considering the question as to whether a particular appeal made by a candidate falls within the mischief of section 123(3) the Court should not be astute to read into the words used in the appeal anything more than can be attributed to them on its fair and reasonable construction.

In *K. C. Sharma v. Krishī Pandit Rishab Kumar and others*, A.I.R. 1960 Madhya Pradesh 27 and in *Mohansingh Laxmansingh v. Bhanwarlal Rajmat Nahata and others*, A.I.R. 1964 Madhya Pradesh 137 it is held that an appeal to vote for a candidate to protect the mother cow is not an appeal on the ground of religion. But in neither of these judgments are any reasons given for taking this view.

In the present case, extracts from a fairly large number of text books regarded as religious amongst the Hindus are tendered to show the Supreme position that cow occupies in the minds of orthodox Hindus. The petitioner though not well versed in Hindu scriptures has given evidence about his view on the position the cow occupies in Hindu religion. He says that as a Hindu, he considers cow not merely an object of worship but as a God itself. He believed that eating of beef is strictly prohibited by the Hindu religion; that if a pure Hindu eats beef, then he ceases to be a Hindu; that taking little urine of cow is regarded as equivalent to taking Charnamrit of Gangaji; that Ganges resides in the urine of cow; that Lakshmi, Goddess of riches, resides in cow dung; that when a man is departing from this world, he has a belief that it is only holding the tail of a cow that will lead him to heaven. This evidence he gave because he was so taught by his mother and grand-father during his childhood and by his teacher while he was at school. In his evidence he has relied upon a passage (Ex. 58) from H.G. Rawlinson's book "India—A short cultural history". At page 4 of this book the author says:

"In spite of all differences of language, race and sect, from the Himalayas to Cape Comorin, the fundamental principles of the Hindu religion hold their immemorial sway over the vast majority of the population. These may be summed up as the almost universal belief in the authority of the Vedas and the sacredness of the cow, the worship of the great gods Śiva and Vishnu in their innumerable aspects, and the institution of caste."

The petitioner also relied upon a passage (Ex. 59) from Louis Ronou's book 'Hinduism' at pages 17 and 18 to the effect.

"In fact, according to what phenomena one consider Hinduism can appear either as an extrovert religion of spectacle, abundant mythology and congregational practices or as a religion which is profoundly interiorized. To the first view belong the activities of the sects, the *Bhakti* movement, and the worship of the cow, in which some find the concrete symbol of Hinduism; here, too, could be included the principle of nonviolence, at least in its social application."

These passages show that there is a universal belief amongst the Hindus to regard cow as sacred and the cow is, therefore, worshipped.

The petitioner has also led evidence of an expert on Hindu religion to establish the position that cow occupies amongst the Hindus and in Hindu religion. Mr. J. H. Dave (Ex. 88), a member of the Bar and a Sanskrit scholar has given evidence as an expert. In his testimony he has stated that he regards cow as

a religious symbol, and has cited extracts from several religious scriptures to support his view. Reference can be had to a few of such extracts.

In the book entitled "Primer of Hinduism" (Ex. 89) by J. N. Farquhar at page 82 author has referred to certain ideas or convictions which are held by all or nearly all Hindus except those permeated by Western thought. There are perhaps three which may be classed together as being nearly as universal as Hinduism. They are, first, the validity of caste and the authority of the Vedas and the Brahmins; second, the doctrine of transmigration; and third, the sacredness of the cow.

Norman Brown in his book, "Man in the Universe" (Ex. 90) at page 57 has dealt with the development of the doctrine of Hinduism that cow has special sanctity. He states:

"The idea of the sanctity of the cow originated in the environment of the Rig and Atharva Vedas and I believe may fairly be regarded as a creation, to some extent unconscious, of the Brahman priesthood. At least three items in Vedic religion seem to me to have combined to give the cow its exalted sacred position. To them were added in post-Vedic times the support of two wider Indian doctrines originating in a non-Vedic environment, namely, the doctrine of Ahimsa and the still more ancient belief in the mother goddess, with which the cow came to be identified. The three Vedic items gave the cow a status of sanctity but without inviolability; the two later notions from non-Vedic sources seem to have given it inviolability."

In Kalyan Go-Ank (Ex.92) a Shloka from Rig Veda (8-101-15) under the title "Do not kill the cow" is cited. It states:

"Cow is the mother of Rudras, daughter of Vasus, sister of Adityas and the source of Nectar. She is innocent. She is Aditi. I am, therefore, telling intelligent people that cow should not be killed."

Reference is also made to a Shloka from Rig Veda (1-89-10) cited in Kalyan Go-Ank (Ex.93) dealing with the position that Aditi occupies in Hindu mythology. It states:

"Aditi is heaven, Aditi is the firmament, Aditi is the mother, the father, the son. Aditi is all Gods' deity as of men. Aditi is all that had gone in the past as also all that is going to come in future."

From Kalyan Go-Ank a photograph of cow (Ex.94) is tendered. This exhibit shows that as stated in Padma Puran Srishti Khanda various Gods and deities reside in various parts of the body of cow.

Ex. 95 is an extract from chapter 48 of Srishti Khanda in Padma Puran. This extract states:

"Shadgha and all the four Vedas along with verses serially dwell in the cow's mouth, in the tip of her horns dwells Indra and both the horns Lord Shankar and Lord Keshav. Skhanda in her stomach. Brahma in her head, Shanker in her forehead, Ashwini Kumaras in both the ears, sun and moon in both the eyes, eagle in her teeth, Saraswati in her tongue, all teerthas in her exhaled breath. Gangaji daughter of Janak in her urine, group of rishis in her pores of hair, Yama in the upper portion of her face, to the right Kuber (god of wealth) and Garud (eagle) to the left, lustrous and powerful group of Yakshas and Gandharvas in her mouth, Nagas, in her nostrils, in the back of her hoofs Apsaras, Lakshmi in her dung, goddess Sarwamangala in her urine, in the front portion of her legs sidhas, in her lowing (mooing "Rambhans"). Prajapati and in her udders dwell the four seas. He who touches the cow every day takes bath in these four seas.

Hence the man who touches the cow gets all benefits. By these he gets rid of all sins. The man who applies the dust raised by the hoofs of the cow to his head is considered to have taken bath in the sacred waters of all Teerthas and is rid of all sins."

Ex. 96 are various verses from the several chapters of Mahabharat. In Anushasan chapter 124 verse 20 it is stated that all Gods have entered the cow just as rivers enter the ocean. Even the heaven and the middle region all enjoy in the glory of the cow. Verse 26 thereof states: where the cow is not

seen, there cannot be presence of God. There cannot be Agnihotra or the Yagnas. Verse 32 states: Cow is the Yagna with all its Angas. Cow is an eternal Yagna. All Vedas with Upanishads are represented in the form of a Cow. In verses 35, 36 and 37 of Anushasan, chapter 193 Mahabharat reference is made to five defalcations of Dharma for which there is no remedy penance. One of such defalcations is the killer of a cow. It is said that after death such sinful persons go to Pretaloka in the hell and are cooked like fish and they have to live upon puss. In verses 17, 18, 24 and 25 of chapter 113 (Anushasan,... Mahabharat it is *inter alia* stated that one should bow down to the cow in the morning and in the evening, then only one gets happiness.

Verse 291 of chapter 3 of Vishnu Dharmottar (Ex.97) deals with sanctity of cow. It states: Cows are sacred and are Mangal. . . In the joints of the neck and the hair of cows, there is sacred river Ganga. Cows represent all the deities (Sarvadevamaya— सर्वदेवमय and cows represent all the sacred places of pilgrimage (Sarvateerthamaya— सर्वतीर्थमय). By a pleasant scratching of the cows, one removes all sins. By giving food to them, one obtains great spiritual merit. By providing them with shelter, one becomes the ruler of a big city. By protecting the cows from fear, one is himself freed from all fears.

Similar extracts were also cited from "History of Dharmashastra" by Mahamahopadhyaya Kane (Ex.98), "The Institutes of Vishnu" by Julius Jolly (Ex. 99) and "Shanti Mayukha" by Bhatta Nilkanth (Ex. 102).

These text books on Hindu religion undoubtedly show that so far as Hindus are concerned, cow is regarded as a symbol of religion and amongst Hindus, cow is worshipped because there is a belief that all Gods and deities reside in her body.

It was urged on behalf of respondent No. 1 that cow is not regarded as sacred by all sections of Hindu, that only a predominant majority thereof regarded cow as sacred, that there is no temple of cow anywhere in the country, that in earlier days even a great saint like Yagnavalkya did not consider it improper to eat beef if it was tender, that before Kalivariya period the eating of beef for Yagna's and for entertaining guests was permitted. The evidence in this case does show that these factors existed, but their existence does not detract from the sacred position that cow occupied amongst Hindus. She is regarded as an embodiment of all the Gods and there is a firm belief amongst Hindus to consider cow as a religious symbol.

The question then to be considered is whether use of or appeal to cow as a religious symbol is made in the present case for furtherance of the prospects of election of respondent No. 1 or for prejudicially affecting the prospects of respondent No. 2 at the election. The cartoon and the poem (Ex. X-16) are undoubtedly scandalous publications published in bad taste and are utterly undignified. They are published in view of the speech made by respondent No. 2 before the Commerce Graduates' Association, the report of which appeared in the Indian Express dated December 30, 1966 (Ex. 121). This report suggests that in the course of this speech respondent No. 2 advocated not only ban on slaughter of cow but also ban on slaughter of pigs. Respondent No. 2 in his evidence has explained that he advocated ban on slaughter of cow because cow was regarded sacred amongst the Hindus, while he suggested ban on slaughter of pigs because it was regarded a dirty animal by the Muslims. In the course of this speech, however, he referred to the family of cow by describing cow mother and father, son and daughter, sister and brother and the husband. The cartoon and the poem are published in view of such a report that appeared in the newspapers. But neither in the cartoon nor in the poem is to be found any reference to election or to canvassing for votes for respondent No. 1 or against respondent No. 2. Apart from the fact that this cartoon and the poem were published during the election period, there is nothing in the contents of this cartoon or the poem to show that it was published for the purpose of furthering the prospects of election of respondent No. 1 or for prejudicially affecting the prospects of respondent No. 2.

As regards the statements made by Jagadguru Shankaracharya, it is clear from the evidence of Chandrakant Desai that he described respondent No. 2, as a hypocrite when he was asked what he thought about respondent No. 2's threat to leave public life if ban on cow slaughter was not introduced. As this

very press conference Jagadguru Shankaracharya also said that he was not interested in elections or politics, that his recent fast was not an election stunt and that he did not come to Bombay to take part in the election campaign. When these statements were pointed out to respondent No. 2, he in his evidence said that he did not say that such statements by Jagadguru were false statements. He also stated that Jagadguru might not have come to Bombay to carry on election campaign. In view of that evidence of respondent No. 2 and the statements made by Jagadguru Shankaracharya at the press conference, it is not possible to hold that what he said at the press conference was for furtherance of the prospects of election of respondent No. 1 or for prejudicially affecting the prospects of election of respondent No. 2.

The result, therefore, is that neither the publication of the cartoon and poem (Ex. X-16) nor the statements made by Jagadguru Shankaracharya at the press conference are made for furtherance of the prospects of election of respondent No. 1 or for prejudicially affecting the prospects of election of respondent No. 2. In view of this evidence, it is not possible to take the view that a corrupt practice within the meaning of section 123(3) was committed by reason of the publication of the cartoon and poem (Ex. X-16) in Maratha or by the statements made by Jagadguru Shankaracharya at the press conference.

Even if it is assumed that a corrupt practice under section 123(3) is committed by reason of the above publications, in order that it should be a ground for declaring the election to be void under section 100(1)(b), it has further to be established that the corrupt practice was committed with the consent of respondent No. 1, the returned candidate. While considering the corrupt practice alleged to be committed by Atre by publishing various news items, cartoons, etc. in Maratha, I have already held that such publications were not proved to be published with the consent of respondent No. 1. Thus it is not established in the present case that the publication of the cartoon and the poem (Ex. X-16) by Atre was with the consent of respondent No. 1. So also, I have held that the petitioner has failed to establish that the Jagadguru Shankaracharya is the agent of respondent No. 1 or made the statements at the press conference with the consent of respondent No. 1. That being the position, this cannot be regarded as a ground under s. 100(1)(b) for declaring the election to be void even if it is assumed that a corrupt practice within the meaning of section 123(3) is committed.

This can also not be regarded as a ground for declaring the election to be void under section 100(1)(d)(ii) of the Act. As regards the publication by Atre in the various issues of Maratha, I have already held that the petitioner has failed to establish that such publication has materially affected the result of the election. So far as the statements by Jagadguru Shankaracharya are concerned, the petitioner has failed to establish that Jagadguru Shankaracharya is the agent of respondent No. 1, that what he stated at the press conference was in the interests of respondent No. 1 and that these statements materially affected the result of the election. Thus the requirements of section 100(1)(d)(ii) are not fulfilled in the present case and the election of respondent No. 1 cannot be declared void on that ground.

My answers to the issues raised on behalf of respondent No. 1 are as under:

- Issue No. 1: In the negative.
- Issue No. 2: In the negative.
- Issue No. 3: In the negative.
- Issue No. 4: In the negative.
- Issue No. 5: Does not arise.
- Issue No. 6: Does not arise.
- Issue No. 7: In the negative.
- Issue No. 8: In the negative.
- Issue No. 9: In the negative.
- Issue No. 10: Does not arise.
- Issue No. 11: Does not arise.
- Issue No. 12: In the negative.
- Issue No. 13: Does not arise.
- Issue No. 14: Does not arise.
- Issue No. 15: In the negative.
- Issue No. 16: In the affirmative. Ex. 79 and Ex. 80 are the correct reports of what he stated at the Press conference.
- Issue No. 17: In the negative.
- Issue No. 18: In the affirmative.

Issue No. 19: Unnecessary to decide so far as statements by Jagadguru Shankaracharya are concerned. So far as Madhu Limaye is concerned, the issue does not survive.

Issue No. 20: So far as the statements by Jagadguru Shankaracharya are concerned, in the negative; so far as the statements by Shri Madhu Limaye are concerned, the issue does not arise as the alleged statements are not made by him.

Issue No. 21: No corrupt practice within the meaning of section 123(4) is established because the petitioner has failed to establish that Jagadguru Shankaracharya is the agent of respondent No. 1 or has made the statements at the press conference with the consent of respondent No. 1. So far as the statements by Shri Madhu Limaye are concerned, the question of commission of a corrupt practice does not arise because the statements attributed to him are not established.

Issue No. 22: Unnecessary to decide.

Issue No. 23: In the negative.

Issue No. 24: Does not arise.

Issue No. 25: In the negative.

Issue No. 26: In the negative.

Issue No. 27: In the negative.

Issue No. 28: Does not arise.

Issue No. 29: In the negative.

Issue No. 30: Does not arise.

Issue No. 31: In the negative.

Issue No. 32: Does not arise.

Issue No. 33: Does not arise.

Issue No. 34: In the negative.

Issue No. 35: In the negative.

Issue No. 36: Does not arise.

Issue No. 37: In the negative.

Issue No. 38: In the negative.

Issue No. 39: In the negative.

Issue No. 40: Does not arise.

Issue No. 41: In the negative.

Issue No. 42: In the negative.

Issue No. 43: In the negative.

Issue No. 44: In the negative.

Issue No. 45: P. K. Atre is the agent of respondent No. 1, Jagadguru Shankaracharya is not the agent of respondent No. 1. It is unnecessary to consider whether Shri Madhu Limaye is the agent of respondent No. 1 or not.

Issue No. 46: In the negative.

The result is that the petition is dismissed.

The question then arises what should be the order of costs and against whom the order for costs should be made. Mr. Gursahani on behalf of the petitioner has contended that some of the issues, viz., issues Nos. 16, 18 and 45 (in part) are answered against respondent No. 1. Therefore, the petitioner should not be made to pay the costs at all and each party should be directed to bear his own costs. In the alternative, he submitted that the costs of these issues which are decided against respondent No. 1 should be set off against the costs that may be awarded to respondent No. 1.

The contention, on the other hand, on behalf of respondent No. 1 is that having regard to the statutory provisions of the Representation of the People Act, the Court has no discretion in the matter of costs when an election petition is dismissed. Mr. Porus Mehta relied upon the provisions of section 119. That section provides.

119: "Costs—Costs shall be in the discretion of the High Court:

Provided that where a petition is dismissed under clause (a) of section 98, the returned candidate shall be entitled to the costs incurred by him in contesting petition and accordingly the High Court shall make an order for costs in favour of the returned candidate."

Section 98 deals with the decision of the High Court and clause (a) thereof deals with an order dismissing the election petition.

It appears on reading the provisions of section 119 together with those of section 98 that when an election petition is dismissed, the Court has no discretion in the matter of an order for costs. The provisions of the proviso to section 119 are mandatory and they state that where a petition is dismissed under clause (a) of section 98, the returned candidate shall be entitled to the costs incurred by him in contesting the petition and accordingly, the High Court shall make an order of costs in favour of the returned candidate. The provisions being mandatory, no discretion is left with the court in the matter of an order of costs when an election petition is dismissed. In view of the provisions of the proviso to section 119, respondent No. 1 will be entitled to the costs of this election petition.

The question then arises, who should be made to pay these costs. It is contended by Mrs. Cloper on behalf of respondent No. 2 that respondent No. 2 should not be made to pay the costs and if at all the Court is inclined to pass an order of costs in favour of respondent No. 1, such an order for costs should be made only against the petitioner. It is true that under section 81 of the Act a petition calling in question the validity of an election can be presented either by a candidate at the election or any elector. The petitioner in the present case is an elector and he would be entitled in his own right as an elector to file an election petition calling in question the election of respondent No. 1 as a returned candidate. When a petition is filed by an elector simply in his own right, a question may possibly arise whether an unsuccessful candidate at the election, who supported the petitioner at the trial, is liable to pay the costs in case the petition is dismissed. In the present case, the evidence of respondent No. 2 shows that it was he who decided to adopt legal proceedings for challenging the election of respondent No. 1. Respondent No. 2 in his evidence stated that after his attention was drawn to the necessary facts and after he consulted persons who knew all election law, he considered whether he should adopt proceedings to challenge the election. He himself decided that the matter should be looked into to consider the question whether the petition should be filed or not. After study and discussions he asked his workers that they should find out whether he should adopt proceedings or somebody else can do it. Ultimately he was advised that somebody else should file the petition as there was enough material for the petition. After discussion with his son-in-law Mr. Patkar and the petitioner, he knew that he could file the petition, but it required lot of time and botheration and that is why he did not personally file the election petition. Even at the time when the decision to file the petition was taken, mind was applied to the question of costs. Respondent No. 2 said that when the decision to file the petition was taken, he only said that it might be filed by the petitioner or by his son-in-law Mr. Patkar or by any other person. This evidence of respondent No. 2 shows that the present petition is filed by the petitioner as a result of a decision taken by him, (Respondent No. 2) and that he personally did not file the petition himself because it would require lot of time and botheration. In his written statement he has supported the case of the petitioner and the trial was conducted on a footing as if this was the petition both by the petitioner as well as by respondent No. 2. That being the position, both the petitioner and respondent No. 2 will be liable to pay the costs. I, therefore, direct that the petitioner and respondent No. 2 do pay the costs of this petition to respondent No. 1, that while calculating the amount of costs, respondent No. 1 will be entitled to advocates' fees at the rate of Rs. 400 per day as through out the trial, he was represented by more than one advocate. Respondent No. 1 will be at liberty to appropriate towards the costs the amount deposited as security for costs during the pendency of this petition.

The decision in this petition be communicated by the Prothonotary and Senior Master to the Election Commission and to the Speaker of the Lok Sabha as provided in section 103 of the Act.

Certified to be a true copy.

This 19th day of March 1968.

Sd./-

For Prothonotary and Senior Master,

[No. 82/6/BY/67.]

K. S. RAJAGOPALAN, Secy.

ORDER

New Delhi, the 24th October 1968

S.O. 3982.—Whereas the Election Commission is satisfied that Shri Choudhury Mohammad Zahurul Haque of Village Choudhury Manzil, Katihar, District Purnea (Bihar) a contesting candidate for election to the House of the People from Katihar constituency, has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice has not given any reason or explanation for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Choudhury Mohammad Zahurul Haque to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. BR-HP/23/67(46).]

By Order,

A. N. SEN, Secy.

गृह मंत्रालय

नई दिल्ली, 1 नवम्बर 1968

एस० ओ० 3983.—राष्ट्रपति संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा निदेश दिये हैं कि विल्ली, हिमाचल प्रदेश तथा पाणिपत के उप-राज्यपाल तथा मणिपुर और त्रिपुरा के मुख्य आयुक्त निम्नलिखित मामलों से संबंधित नियम बनाने की शक्ति का प्रयोग करेंगे :—

- (i) संबंधित संघ राज्य-क्षेत्र के कार्य के संबंध में अपने प्रशासनिक नियंत्रणाधीन केन्द्रीय सिविल सेवाओं तथा श्रेणी 1 पदों में भर्ती की प्रणाली ;
- (ii) ऐसी सेवाओं तथा पदों पर नियुक्ति के लिए आवश्यक अर्हताएं और
- (iii) परीक्षा पुष्टि, बरीयता तथा पदोन्नति के प्रयोजनों के लिए ऐसी सेवाओं तथा पदों पर नियुक्त व्यक्तियों की सेवा की शर्तें ।

2. इस निदेश के अनुसरण में बनाये गये परीक्षा पुष्टि, बरीयता तथा पदोन्नति से संबंधित किसी भी नियम सहित कोई भी भर्ती नियम संघ लोक सेवा आयोग के पूर्व-परामर्श के अधीन होंगे ।

3. दो या दो से अधिक संघ राज्य-क्षेत्रों के नामान्य संवर्ग की सेवाओं तथा पदों पर इस अधि सूचना में समाविष्ट कुछ भी लागू नहीं होगा ।

[सं० 24/88/78-डी० एव० (एस)]

आर० सी० जैन, उप सचिव ।

MINISTRY OF HOME AFFAIRS

New Delhi, the 4th November 1968

S.O. 3984.—In exercise of the powers conferred by the provision to article 309 of the Constitution, the President hereby makes the following rules regulating the conditions

of service of persons allotted under the provisions of section 82 of Punjab Reorganisation Act, 1966 (31 of 1966) to serve in connection with the affairs of Union in relation to the territory transferred to the Union territory of Himachal Pradesh under section 5 of the said Act, namely:—

1. **Short title and commencement.**—(1) These rules may be called the Himachal Pradesh Allotted Government Servants (Conditions of Service) Rules, 1968.

(2) They shall be deemed to have come into force on the 1st day of November, 1966.

2. **Conditions of service applicable to allotted Government servants.**—The rules relating to conditions of service applicable, from time to time, to those persons who, immediately before the commencement of these rules, were employees of the Himachal Pradesh Administration, shall apply to every person who, immediately before such commencement, was serving in connection with the affairs of the former State of Punjab and who, on or after such commencement, has been allotted under the provisions of sub-section (1) or sub-section (2) of section 82 of the Punjab Reorganisation Act, 1966 (31 of 1966).

[No. F. 8/7/68-HMT.]

New Delhi, the 7th November 1968

S.O. 3985.—In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the President hereby makes the following rules further to amend the Manipur Employees (Revision of Pay) Rules, 1966.

2. These rules may be called the Manipur Employees (Revision of Pay) Amendment Rules, 1968.

3. In schedule to Manipur Employees (Revision of Pay) Rules, 1966:—

Under the heading "Community Development Department" the following entries shall be inserted under columns 1, 2, 3 and 4 respectively:—

30 Assistant	Rs.250—25—300—30—450	Rs. 350—30—500—
Development	EB—30—600—EB—35—800	EB—30—650—EB—
Commissioner.		35—1000.

[No. 1/16/65-HMT.]

R. C. GUPTA, Under Secy.

नई दिल्ली, 4 नवम्बर, 1968

सामान्य सांविधिक नियम 3986— संविधान के अनुच्छेद 309 के परामर्श द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राष्ट्रपति जी एतद्वारा पंजाब पुनर्गठन अधिनियम 1966 (1966 का 31 वां) की धारा 82 के उपबन्धों के अन्तर्गत आवंटित व्यक्तियों की उत्तम अधिनियम की धारा 5 के अधीन हिमाचल प्रदेश संघ राज्य क्षेत्र को हस्तान्तरित क्षेत्र से संबंधित संघ के मामलों के सम्बन्ध में नौकरी के लिए सेवा की शर्तें नियमित करने के निम्नांकित नियम बनाते हैं ; नामतः :—

1. **लघु शीर्षक तथा प्रारम्भ** :—(1) ये नियम हिमाचल प्रदेश आवंटित सरकारी कर्मचारी (सेवा की शर्तें) नियम, 1968 कहे जा सकेंगे ।

(2) वे पहली नवम्बर, 1966 से लागू समझे जायेंगे ।

2. **आवंटित सरकारी कर्मचारियों पर लागू सेवा की शर्तें** :— सेवा की शर्तों के जो नियम उन व्यक्तियों पर समय-समय पर लागू हैं जो कि इन नियमों के प्रारम्भ होने से एकदम पहले हिमाचल प्रदेश प्रशासन के कर्मचारी थे, वही नियम प्रत्येक ऐसे व्यक्ति पर लागू होंगे जो कि ऐसे प्रारम्भ से एकदम पहले भूतपूर्व पंजाब राज्य के मामलों के मिलाप में नौकरी कर रहा था तथा जिसका ऐसे प्रारम्भ की

तिथि या उसके बाद पंजाब पुनर्गठन अधिनियम, 1966 (1966 का 31वां) की धारा 82 की उप-धारा (1) या (2) के उपबन्धों के अन्तर्गत आवंटन किया गया हो।

[सं० एफ० 8/7/67-एच० एम० टी०]

आर० सी० गुप्ता, अवर सचिव।

New Delhi, the 6th November 1968

S.O. 3987.—Whereas the “Unlawful Activities (Prevention) Tribunal” consisting of Shri Justice P. K. Goswami, Judge of the High Court of Assam and Nagaland, constituted by the notification of the Government of India in the Ministry of Home Affairs No. S.O. 579 dated the 12th February, 1968, to adjudicate upon the matter contained in the notification of the Government of India in the Ministry of Home Affairs No. 311 dated the 16th January, 1968 has completed its work;

And whereas the Central Government is of opinion that the continued existence of the said Tribunal is unnecessary;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 5 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) the Central Government hereby directs that the aforesaid Tribunal shall cease to exist with effect from the date of publication of this notification.

[No. 3/7/68-Poll(K).]

S. S. VARMA, Dy. Secy.

CENTRAL BOARD OF DIRECT TAXES

INCOME-TAX

New Delhi, the 31st October 1968

S.O. 3988.—In exercise of the powers conferred by sub-section (1) of Section 121 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following amendments to the Schedule appended to its Notification No. 20 (F.No. 55/1/62-IT), dated the 30th April, 1963 published as S.O. 1293 on pages 1454-1457 of the Gazette of India Part II Section 3 sub-section (ii) dated the 11th May, 1963 as amended from time to time:—

I. Against S. No. 9, Madras-I under Column 3 of the Schedule appended thereto:

“(i) The existing entries against items 6,7 and 20 shall be deleted.

(ii) The existing items 8 to 19 shall be renumbered 6 to 17.

(iii) The following entry shall be added:

“18. Vellore”

II. Against S. No. 9-B, Madras II, under column 3 of the Schedule appended thereto:

(i) The existing entries against items 25 and 26 shall be deleted and shall be substituted by the following:—

“25. Salem—All Circles

26. Kancheepuram.”

(ii) The following entry shall be added:

“27. Hundi Circle I, Madras”.

This notification shall come into force on the 1st November, 1968.

[No. 110 (F. No. 55/391/68-ITA.III).]

S. R. WADHWA, Under Secy.

COLLECTORATE OF CUSTOMS AND CENTRAL EXCISE

CENTRAL EXCISES

Cochin, the 15th October 1968

S.O. 3989.—In exercise of the powers conferred on me under Rule 233 of the Central Excise Rules, 1944, I hereby direct that every wholesale dealer in duty paid tobacco, including a manufacturer of tobacco product, shall :—

- (i) keep separate accounts of Tobacco assessed at higher and lower rates of duty, by maintaining separate E.B. 3 Account Books, or in separate sections of the E.B. 3 Books;
- (ii) stock the Tobacco bags/packages in an orderly manner, so as to enable easy verification of the goods with the balance in the E. B. 3 Accounts. Consignments of tobacco received under different transport documents should be so stored that they can be easily identified and distinguished, from each other;
- (iii) where tobacco is delivered under Sale Note or T.P. 1 or sold in retail, he shall enter the following particulars on the reverse of the parent T.P. 1 or Sale Note as the case may be :

Date of issue	T.P. 1 or Sale Note Number or Retail Sales	No. of packages	Total net weight of Tobacco issued	ance
1	2	3	4	5

- (iv) maintain separate accounts where he intends to mix lower rated and higher rated lots of tobacco in form E.B. 3., providing separate sections for different varieties and mention the number and date of the relevant transport document, the weight of tobacco pertaining to each such document, and the total weight of the processed tobacco, on the receipt side. The quantities taken for such processing or mixing shall be debited to the respective accounts maintained in respect of the higher rated tobacco and the balance adjusted in the accounts, making necessary cross references in the Remarks column. Similar remarks shall also be made on the T.P.1s or Sale-Notes covering the parent consignments or lots;
- (v) enter the formula of manufacture, on the fly leaf of the E.B. 3 Books showing the proportion of tobacco to other ingredients used in the manufacture of tobacco-products viz. Hookah tobacco, Snuff etc. and in the case of Biris, the types and brands of Biris manufactured and the weight of tobacco used for thousand Biris of each type or the number of Biris of each type obtained from a 1/2 K.G. of tobacco. The total quantity of tobacco product manufactured or the number of Biris made, will be shown in the remarks column of the E.B. 3 Account against the entry for the issue of the tobacco used, in such manufacture;
- (vi) adjust their book balances in respect of the losses or gains, at least once every quarter so that the balance truly represents the physical stocks. But in cases, where Sale-Notes are issued, the adjustment in respect of gains or losses must, however, be made immediately when the consignment received on the A.R. 1/T.P. 1 is exhausted;
- (vii) make suitable entries in the remarks column of the E.B. 3, in cases where the whole leaf tobacco cleared from the warehouse is intended to be processed in the L. 2 premises. Variety, number and net weight of packages of tobacco taken for processing, should invariably be shown. Similarly on completion

of processing the different varieties with their net weight and number of packages obtained or derived after processing, as also the loss/gain noticed should be shown in the remarks column of the E.B. 3, making suitable adjustments in the Accounts. Necessary entries may also be made on the reverse of the respective T.P. 1 or Sale Note. Whenever water is sprinkled on the tobacco for preservation, the weight of the water added and the date on which such sprinkling is done, should be noted in the remarks column of the E.B. 3 account;

- (vii) give prior intimation in writing to the Superintendent of Central Excise, in whose jurisdiction, the licensed premises exists, in cases where the licence intends to mix lower rated and higher rated consignments of tobacco or to process tobacco received in the duty paid premises in the whole leaf form.

[No. 7/68.]

D. N. KOHLI, Collector.

OFFICE OF THE COLLECTOR OF CENTRAL EXCISE, MADHYA PRADESH AND VIDARBHA

CENTRAL EXCISE

Nagpur, the 28th October, 1968

S.O. 3990.—In exercise of the powers conferred under Rules 15 and 16 of the Central Excise Rules, 1944, I hereby notify that in the entire collectorate of M.P. and Vidarbha a grower may undertake coffee cultivation up to 12 Arees without giving a declaration under Rule 15 of the Central Excise Rules, 1944 and also in the said area a curer, may cure coffee upto 60 Kgs. without a declaration under Rule 16 *ibid*.

[No. 7/1968.]

S.O. 3991.—In exercise of the powers vested in me, under Rules 15 and 16 of the Central Excise Rules, 1944, and in supersession of this Collectorate Notification No. 13/60 (Central Excise) dated the 7th June, 1960 as amended from time to time, I hereby notify that a grower may undertake cultivation of Indian Air-cured Tobacco upto an area of 12 Ares without declaration under Rule 15 of Central Excise Rules, 1944 and a curer may cure Indian Air-cured Tobacco upto a limit of 60 Kgs. without declaration under Rule 16 *ibid*, within the jurisdiction of Revenue Districts, as mentioned in Col. 2 of the table hereto annexed, excepting the villages mentioned in Col. 3 thereof.

TABLE

Sr. No.	Name of the area in terms of Revenue jurisdiction (<i>i.e.</i> Districts)	Names of villages to which the exemption under rule 15 and 16 is <i>not</i> applicable
(1)	(2)	(3)
1	Chhindwara Distt.	Ambadi, Sangam, Jirola, Lodhikheda, Wadegaon, Ambekhapra, Lohani, Ramguri, Pareghat, Rajura Khurd, Sawanga, Karmakadi, Rampuri and Bichwi.
2	Narsingpur Distt.	Supla, Andia, Khamaria, Karayabhula, Jarjola, Singrampur, Joharia, Rampendri, Got Thire, Hirapur, Hirapur Amda, Barman, Ghatpandri, Surajgaon, Chandankheda and Bhawarpan.
3	Mandla Distt.	NIL.
4	Seoni Distt.	NIL.
5	Jabalpur Distt.	NIL.

(1)	(2)	(3)
6	Satna Distt.	Kotar.
7	Panna Distt.	NIL.
8	Rewa Distt.	Sohagi, Majhgawan, Purwa, Pancha and Atraila.
9	Sidhi Distt.	NIL.
10	Chhattarpur Distt.	Dhikpura, Mahraj pur, Urdmau, Doni, Tatam, Chhat tarpur, Manwara, Khaddi, Barigarh & Bikarmpur.
11	Tikamgarh Distt.	Kargaon, Niwari, Laurgaon, Tikamgarh Hiranagar, Minara, Nayakheda and Lidhoh
12	Sahdol Distt.	NIL.
13	Sarguja Distt.	NIL.
14	Gwalior Distt.	Bilati, Parsen, Bhandar, Barkisarai, Bader ^a Dhanoti, Salon, Nobai, Richar, Sadwara and Sirsai.
15	Bhind Distt.	Barwa, Teton, Sherpur, Chandokhar Endori, Chhareta, Kanipura, Tehra, Chimka, Dondri, Mehdoligormi and Barhad.
16	Morena Distt.	NIL.
17	Datia Distt.	Datia, Unao, Bardwan, Ganeshkheda, Pandri ^a Gondan, Unchia and Jughalpur.
18	Shivpuri Distt.	NIL.
19	Sagar Distt.	Khurai.
20	Damoh Distt.	NIL.
21	Vidisha Distt.	NIL.
22	Schore Distt.	NIL.
23	Raisen Distt.	NIL.
24	Hoshangabad Distt.	NIL.
25	Rajgarh Distt.	NIL.
26	Rajpur Distt.	NIL.
27	Durg Distt.	NIL.
28	Raigarh Distt.	NIL.
29	Bilaspur Distt.	Tank Bed Areas.
30	Balaghat Distt.	Tank Bed Areas.
31	Guna Distt.	Sanwada and Sandkheda.
32	Indore Distt.	Si rpur, Kanhadia, Chhoti-Betma, Khemana, Bhokha-Khedi, Caria, Ankiya, Hatod, Indore, Bisankhedi, Semlia-Chau, Gehti, Morod-Hat, Dhulet, Ujjad Limboda-gari, Khajraya, Jalalpura, Kagwa, Kai, Runji, Atyana, Bhamakheda, Jalodiya, Palasia, Akoliya, Semda, Karki, Khatwadi, Depalpur, Karwasa, Billod, Khandiya, Ujaliya, Girota, Osrod, Pura, Sihoda, Manpur, Kankria, Khamod, Pachola, Panod, Siloda, Balgara, Bhaulia-Khedi, Takun, Mokata, Bisa-khedi, Baghana, Barlai, Keshripura, Maulia-Khedi, Tita-wada, Gaula, Zinda-khedi, Hindoliya, Rajoda, Ringonodiya and Pawarda.

(1)	(2)	(3)
33 Dewas Distt.		Sonwani-Gopal, Jawadiya, Mundaheda, Khajuria-Parmar, Barkheda-Kayam, Ankiya, Dhabla, Tumdawada (Jagdishpur) Salam-khedi, Narkhedi, Bagana, Sarol, Rupatta, Kelod, Merkhedi, Akbarpur, Pipliya-Rao, Akhepur, Sajnod-Kheda, Bessooni, Seeta-khedi, Bhimakhedi, Karadia, Dakan-khedi, Nawadekhedi, Mangrola, Arniya, Kumardi, Bisakhedi, Kumaria-Rao, Bhonrasa, Jangipur, Pipliya-khurd, Magriya, Ganjpura, Mudria, Dhabla, Bhatoniparmar, Rajoda, Polad, Sanwarsal, Jhirwaya, Sawer, Chavla, Bahulia, Hatpipliya, Semlikheda, Matmore, Manasa and Mau-kheda.
34 Shajapur Distt.		NIL.
35 Ratlam Distt.		NIL.
36 Ujjain Distt.		Barnagar, Singarada, Giniwala, Jhampla Khandwasura, Bisakheda, Sumaheda, Dhaturia, Ranwa, Baisla, Bisaheda and all villages of Mahidpur Tehsil.
37 Dhar Distt.		Darnod, Sundrel, Dongargaon, Bikhron, Beganda, Pallavad, Jhakrood, Eklara, Bhatpura Mehgaon, Pandhanja, Bagdipura, Nimrani, Dol, Dudhi, Gulzara, Dabhar, Palasia, Degaha, Kusumda, and Mirzapur.
38 Mandsaur Distt.		NIL.
39 Jhabua Distt.		NIL.
40 Khandwa Distt.		Namagarh and Nachun.
41 Khargone Distt.		Navalpura, Nisarpur, Machalgaon, Aswada, Melan, Cranchania, Gozaon, Chikalda, Khatia, Kubdol, Mohammedpur, Salan, Sahabad, Nandra, Khargaon, Mogaon, Dirya Kandia, Pipha-ujar, Balsamund, Bhilgaon, Pathrar, Mejampur, Rashidpur, Sulgon, Tikariva, Balgaon, Balkhar, Silawad, Karrayad, Dahedla, Bagoood, Piplaj, Piplool, Saigaon, Amlali, Parchpoola, Taloon, Kundiya, Khedi, Anjad, Palassa, Mohipura, Badasha, Sajwai Chapri, Sali, Datwada, Zoltpri, Rajpur Chakari, Rajpur, Golata, Chichli, Costa & Tembla Khand.
42 Chandrapur Distt.		Ankisa, Asarali, Sunkarali, Muttapur, Mulunpeta, Yella, Manerajaram, Palli, Chikyella, Chandaram, Ragunta, Somanpalli, Somnoor, Devalmari, Podsa, Lathi, Shenzao, Narawda, Wirur, Hirapur, Aheri, Chicholi, Ruiha, Chanoka, Dhakori, Murli, Sirpur, Bamni, Aheri, Kandla and Mohogaon.
43 Wardha Distt.		Jalgaon and Ghodegaon.
44 Yeotmal Distt.		Umarched, Mulwa, Sangam, Chicholi, Chalari, Bilargaon, Digras, Danki, Karanji, Deosari, Sakhora, Sukli, Jawla, Deogaon and Jambazar.
45 Akola Distt.		Bonwada, Telhara, Wadegaon, Basim, Tarda, Asegao, Tilwa, Bhariahangir, Yeota, Shogri, Kolgaon and Dabhall.

(1)	(2)	(3)
46 Buldhana Distt.		Chikhali, Palarkhedi, Vithalwadi, Sheloo, Mera, Gankhed, Jambhurna, Kumbhefal, Nipana, Lasura, Dhota, Jalpur, Khamgaon, Makta, Pimpalgaon, Devi, Umali-Khaisa, Kothli and Malkapur.
47 Nizpur Distt.		Kamptee Cantt. Khairi, Kelapur, Sitalwadi, Mangli, Bidbina, Yerkheda, Kacharisa-wga, Saoner, Timaldo, Rajwadi, Pachkhedi, Kuhian and Dahegaon.
48 Amravati Distr.		Thugaon, Ner, Badnera, Rama, Abitur, Afzalpur, Takarkheda, Sambhu, Pasado Dastarpur, Narayanpur, Markie, Umartek, Jalga, Krishnapur, Takarkheda, Rajna, Magrul Chawla, Rasegaon, Wasani-khurd, Hantoda, Takarkheda, Murka, Borgaon-Takli, Kurla, Umari, Mamdabad, Naigaon, Wasim-Buzurg, Vadona, Chawla, Yewta Khairej, Danoda, Elkia, Jaipur, Takra, Chincholi-buzrug, Surji, Kamalpur, Taroda, Ramgaon, Darapur, Wadurgun-gaye, Rawalgaon and Bhugaon.
49 Betul Distt.		NIL.
50 Bhandara Distt.		NIL.

If the limits of 12 Ares and 60 Kgs. prescribed above are exceeded, it will be obligatory on the part of growers/curers to declare the particulars to the proper officer either personally or by Registered post (A.D.).

[No. 8/1968.]

VIPIN MANEKLAL, Collector.

OFFICE OF THE COLLECTOR OF CENTRAL EXCISE

CENTRAL EXCISE

Poona, the 30th October 1968

S.O. 3992.—Under the second proviso to Rule 15 and 16 of the Central Excise Rules, 1944 as amended by the Government of India, Ministry of Finance (Deptt. of Revenue)'s Notification No. 119/60 dated 1st October, 1960 and in supersession of the Poona Collectorate Notification No. CER-1/61 dated 10th January, 1961, I hereby notify the areas shown in the Schedule as sparse growing areas for the purpose of Rules 15 and 16 of the Central Excise Rules, 1944. In these areas persons cultivating tobacco on lands measuring 12 Area or less in area shall be exempted from the provisions of Rule 15 and persons curing a quantity of unmanufactured tobacco not exceeding 60 (Sixty) Kilograms shall be exempt from the provisions of Rule 16.

The Notification shall be deemed to have taken effect from the first day of September, 1968.

Schedule showing of Rule 15 and 16 of the Central Excise Rules, 1944.

Serial No.	District	Name of the Taluka/Mahal	Villages exempted under Rule 15 and 16 of the Central Excise Rules, 1944.
1	2	3	4
1	Nanded	Kandhar	All villages except 1. Kandhar, 2. Sonkhed 3. Kawatha

1	2	3	4
1. Nanded— <i>contd.</i>	Mukhed Mahal	. . .	All villages except
	Nanded	. . .	Do.
	Hadgaon	. . .	Do.
	Bhokar Mahal	. . .	All villages
	Kinwat	. . .	Do.
	Dagloor	. . .	All villages except
	Billoli	. . .	Do.
2 Parbhani	Pathri	. . .	Do.
	Gangakhed	. . .	Do.
	Basmath	. . .	Do.
3 Parbhani	Jintoor	. . .	Do.
	Parbhani	. . .	Do.
			1. Mukramahed. 2. Ek-lora. 3. Motarga.
			1. Nanded. 2. Mudkhed.
			1. Himayatnagar. 2. Ashu
			3. Hadgaon 4. Kamari
			5. Lingapur 6. Jawalgaon.
			7. Kaleshwar
			8. Pewa.
			1. Degloor. 2. Tamloor
			3. Kawalgaon Chakoor
			5. Mjalga 6. Shelgaon
			7. Madan Kallur
			8. Narangal 9. Kokalgaon
			10. Tadkhed
			11. Shahour 12. Sangh
			(Omer) 13. Bhaigaon
			14. Allur 15. Martoli
			16. Bhaktapur 17. Karadkhed.
			1. Karla (Bk) 2. Savli
			(Bhoji) 3. Kasaralli
			5. Belkoni (BK)
			6. Kondalwadi 7. Badur
			8. Koleborgaon
			9. Belkoni (Kd.)
			1. Sailu 2. Kothala
			3. Digra (Jagir) 4. Andhapuri
			5. Umbru
			6. Gogalgaon 7. Ambegaon
			8. Rampuri (Kd.) 9. Khadgaon
			10. Hadgaon-Nakhate
			11. Rajewadi 12. Karudgaon
			14. Dhama-mangaon 15. Rehma.
			1. Gauli Pimpri 2. Mahadpuri
			3. Masala
			4. Azamabad 5. Sonpeth
			6. Wani-Sangam
			7. Dhasdi 8. Raorajora
			9. Dharsura 10. Sirsi (Bk)
			11. Thadi Ukadgaon.
			1. Basmath 2. Babulgaon
			3. Hatta.
			1. Mooda 2. Bori 3. Dhanora
			4. Charthana
			5. Pachalegaon 6. Charni
			7. Dhanora
			8. Barda 9. Wazzai
			10. Ban 11. Karwali
			12. Kausdi 13. Ghondhal.
			14. Balsa 15. Rohil Pimpri.
			1. Mirzapur 2. Sadegaon.

1	2	3	4
2. Parbhani— <i>contd.</i>	Hingoli]	All villages except	1. Hingoli 2. Narsi 3. Sengon 4. Hatta 5. Pan-Kanhergaon 6. Bramhanwadi 7. Bod- kha. 8. Bhankheda.
	Kalamnuri	Do.]	1. Kalamnuri 2. Donagr- gaon-Pool 3. Kanegaon 4. Kanoli 5. Nandapur 6. Sadegaon 7. Yele- gaon-Gauli 8. Ghoda 9. Sakli 10. Takulga- van 11. Bolda 12. Petra 13. Wadegaon-Kille 14. Sawangi 15. Wa- ranga.
	Parcur	Do.]	1. Rohana 2. Patoda 3. Takli 4. Wanzola 5. Ran-Sawargaon 6. Mapegaon (Khurd) 7. Mapegaon (Bk) 8. Nansi 9. Gopergaon 10. Ashti 11. Golegaon 12. Sankanpuri 13. Salgaon 14. Amba 15. Dhamangaon- Pimpli.
3. Osmanabad	Nilanga	Do.	1. Nilanga 2. Usluri 3. Badur 4. Kasarbal- kunda. 5. Kasarshirsi 6. Chincoli Sayakhan 7. Jawalgaon Sauri.
	Latur	Do.]	1. Latur 2. Takli Brad- pur 3. Bhattangalli 4. Babulgaon.
	Ahmedpur	Do.	1. Ashta 2. Wadwal 3. Nalegaon. 4. Janwal. 5. Chakour.
	Udgir]	Do.	1. Her 2. Takli 3. Dhane- gaon. 4. Jawalgaon 5. Devalgaon.
	Bhoom	Do.	1. Ralesangvi 2. Washi 3. Walwad 4. Saram- kundi.
	Paranda	Do.	1. Dongaon 2. Sonari 3. Mankeshwar 4. Donji 5. Devalgaon 6. Jag- dalwadi 7. Aleshwar 8. Kukadgaon 9. Mal- kapur 10. Paranda 11. Bagalewadi 12. Ambi 13. Tandulwadi.
	Osmanabad	Do.]	1. Suradi 2. Osmanabad 3. Wadgaon 4. Deolali 5. Ruibhar 6. Kham- gaon 7. Wakharwadi 8. Dhoki 9. Ter 10. Pa- lasap 11. Dautpur 12. Sangavi 13. Ka- megaon 14. Sa- mudrawadi 15. Bembali

1	2	3	4
<hr/>			
3. Osmanabad— <i>contd.</i>			16. Padoli 17. Kangra 18. Takviki 19. Ka- rajkheda 20. Takli Dhoki 21. Umregavan
	Ausa . . .	All Villages	
	Kalam . . .	All villages except	1. Lokhangaon 2. Para 3. Satra 4. Khondala 5. Kalam 6. Ter- kheda 7. Ratnapur 8. Tandulwadi 9. Borda.
	Umaiga . . .	All villages except	1. Lohara (Bk) 2. Mulej 3. Dalimb 4. Turori 5. Dabka 6. Marum 7. Tugaon 8. Jeoli 9. Sastoor 10. Mardi 11. Kasgiwadi 12. Omerga 13. Kunnali 14. Bedga 15. Guagalgaoon 16. Sundarwadi
	Tuljapur . . .	Do.	1. Kali 2. Wadgaon Kali 3. Sawargaon 4. Ta- malwadi 5. Masla (Kd.) 6. Pimpla (Bk) 7. Rai- kheli 8. Sindhpahal 9. Tuljapur 10. Barul 11. Katagaon 12. Nal- durga 13. Gujanoor.
4. Aurangabad .	Khuldabad Mahal	All Villages	
	Sillod . . .	All villages except	1. Ajanta 2. Annad.
	Aurangabad . . .	Do.	1. Kolghar 2. Pimpri.
	Bhokardhan . . .	Do.	1. Fattepur.
	Kannad . . .	Do.	1. Hatnoor 2. Ghusur 3. Borsar (BK) and (Kd) 4. Ategaon 5. Takali 6. Vita 7. Kanadgaon (BK) 8. Lavali 9. Rulkheda.
	Soegan Mahal . . .	Do.	1. Palaskheda.
	Jafarabad Mahal . . .	All villages	
	Jalna . . .	All villages except	1. Saygaon 2. Mahjara- gaon 3. Wahegaon 4. Wakulni 5. Chikhali Rajur 6. Dhamangaon 7. Hiwra 8. Rolle 9. Dongarseoli 10. Dhagi
	Paithan . . .	Do.	1. Akhatwadi 2. Ape- gaon 3. Aurangpur 4. Avadi-Uncheagaon 5. Dadhegaon (BK)(KD) & Jagir 6. Dalwadi 7. Lawarwadi 8. Gan- galwadi 9. Hiradpuri 10. Jogeshwari 11. Kausan 12. Kolibodak 13. Krishnapur 14. Lamgavan 15. Maigon 16. Mavasga- van 17. Mirakhed

1	2	3	4
4.	Aurangabad— <i>contd.</i>		<p>18. Naigaon 19. Narla 20. Navgaon 21. Pat- than 22. Pategaon 23. Pimpalwadi 24. Shekta 25. Takali- Amhad 26. Shevta 27. Telwadi 28. Uche- gaon 29. Wadwali 30. Waghadi 31. Wahegaon</p>
	Gangapur	All villages except	<p>1. Agarwadgaon 2. Amal- ner 3. Aurangapur 4. Bagdi 5. Bhagthan 6. Bhalgaon 7. Dhore- gaon 8. Dighi 9. Dhamori (BK) & (KD) 10. Gadlimb 11. Haibtpur 12. Jamgaon 13. Jikthan 14. Jogeshwari 15. Kaegon 16. Lakham- pur 17. Maha- laxmikheda 18. Malun- ja BK 19. Mandwa 20. Mendhi 21. Narsing- pur 22. Nawabpur 23. Navargaon 24. Rmrair. 25. Saokheda 26. Shan- kerpuri 27. Shendur- wadha 28. Solegaon 29. Tandulwadi 30. Tembhapuri 31. Uttar- wadi 32. Vajar 33. Yesgaon.</p>
	Ambad	Do.	<p>1. Patharwala (B & K) 2. Gondi 3. Zipri 4. Hasanpur 5. Kothala 6. Ganga Chincholi 7. Sadegaon 8. Raja takali 9. Anterwali Tembhi. 10. Goonj 11. Murti 12. Jamb 13. Domalgaon 14. Dori 15. Gandhari 16. Sasti Pimpalgaon 17. Nale- wadi 18. Anterwali Sasti 19. Taka 20. Jamkhed 21. Chinch- kheda 22. Shahapur 23. Dadhegaon 24. Pimpalgaon (Soni) 25. Raniunchegaon 26. Mangu Jalgaon 28. Dahipuri 28. Saraf- gavan 29. Awalgaon 30. Hadgaon 31. Ka- ranjana 32. Dahithana 33. Chikangaon 34. Deshgavan 35. Maha Bahegaon 36. Badapur 37. Ranjani 38. Ranjan- wadi 39. Paradgaon.</p>

1	2	3	4
4. Aurangabad—contd.	Vaijapur	All villages except	1. Babulgaon (BK) 2. Babulgaon Ganga 3. Bhagur 4. Borsar 5. Veergaon 6. Wan- jargaon 7. Nandu- dhok 8. Saokheda Ganga 9. Purangaon 10. Pathari 11. Mandki 12. Lakhni 13. Dhon- dalgaon 14. Sirasgaon 15. Chorwar ghargon 16. Babulgaon (Kd) 17. Kangoni 18. Chon- dhphal 19. Nadi 20. Jalgaon 21. Mali- saga 22. Khambala 23. Narayanpur 24. Taklisaga.
5. Bhir . . .	Kaij . . .	Do.	1. Bharur 2. Kaij 3. Na- durgat 4. Kothar- band 5. Dhunkwad 6. Kandi Mali 7. Bopla 8. Lakha 9. Kopara 10. Rui Dharur 11. Vida 12. Aadas 13. Sonija- wala.
	Patoda Mahal	Do.	1. Nandewali 2. Rales- angvi 3. Sawargaon (Chakda) 4. Rangari 5. Rakshashuvan 6. Rai- moh 7. Nalgaon 8. Chumtali 9. Amalner 10. Shirpurghat 11. Pa- dali.
	Mominabad . Ambejogai)	Do.	1. Parali 2. Kharola 3. Ambajogai 4. Deola 5. Khol Kanadi 6. Ghat Nandur 7. Pangaon 8. Pangar 9. Talegaon 10. Sarad- gaon 11. Dharampuri.
	Georai . . .	Do.	1. Aherwahegaon 2. Kan- nad Pimpalgaon 3. Madalmohi 4. Chi- khali 5. Wadgaon 6. Sushi 7. Sirasmarg 8. Takalgavan 9. Ukad- pimpri 10. Darwanti 11. Tandola 12. Phul- sangvi 13. Bhojgaon 14. Antarwali (Bk) 15. Bori Pimpalgaon 16. Rakshashuvan 17. Surlegaon 18. Mael- gaon (KD) 19. Umapur 20. Savargaon 21. Katchincholi 22. Mir- gaon 23. Bhogalgaon 24. Shinkheda 25. Nandalgaon 26. Hirapur 27. Dondrai 28. Padalsingi 29. Itkur

1	2	3	4
5.	Bhir—contd.	All villages except	30. Chakalamba 31. Mudhapuri 32. Pokhari 33. Kholgaon 34. Sa-waleshwar 35. Georai 36. Mahalas Pim-palgaon 37. Ranmala 38. Devpimpri 39. Gulaj 40. Pathar-wala (BK) 41. Gunt-gaon 42. Maturi 43. Pimpala 44. Gaik-wad Jalgaon 45. Bag-Pimpalgaon 46. Kambi 47. Kurampimri 48. Chaklaborgaon.
	Bhir . . .	Do.	1. Chaosala 2. Tandula-vadi 3. Nandur (Haveli) 4. Hingni 5. Kurla 6. Aurangpur 7. Kini (Pai) 8. Malpuri 9. Goshapuri 10. Kukad-gaon 11. Adgaon 12. Ramagaon 13. Na-thapur 14. Bhir 15. Bor-taka 16. Pargaon Siras 17. Bellura 18. Devi Babulgaon 19. Shivani 20. Ambilwadgaon 21. Palsingan 22. Pim-pergavaon 23. Umrad-Jahangir 24. Sundana 25. Yellan Ghat 26. Namalgaon 27. Pan-gari.
	Ashti . . .	Do.	1. Dahithan 2. Takal-singi 3. Sangvi (Asti) 4. Khadkat 5. Balewadi 6. Ashti (Harinarayan) 7. Pimparighat 8. Shirad 9. Shirapur 10. Kada 11. Sabalkhed 12. Am-bhora 13. Hatloon 14. Koyal 15. Loni (S. Mir) 16. Nandoor 17. Delgaonghat 18. Sawargaon 19. Velturi 20. Sulemandevla 21. Piparkhed 22. Devi Nimgaon 23. Pathan 24. Ghat Sangwi (Patan) 25. Chinchala 26. Bhorodi 27. Undirkhed 28. Pimpalsuttri 29. Wagluj 30. Walunj 31. Pimpalgaonghat.
	Manjlegaon . . .	Do.	1. Kavadgaon Huada 2. Achare Takli 3. Deo-kheda 4. Bkdara 5. Kavadgaon BK 6. Talkhed 7. Mangrul 8. Chatra Borgaon

I	2	3	4
5. Bhir—concl'd.			9. Sadola 10. Mali Pargaon 11. Sawar Pimpalgaon 12. Ganga Masala 13. Mogra 14. Nithrid 15. Dindrd 16. Manjlegaon 17. Limlegaon 18. Pathurd 19. Kuppa 20. Manjarath 21. Abegaon 22. Ga- vanthadi 23. Takr Van 24. Warola 25. Digra 26. Roshanpuri 27. Kalegaon 28. Dubatha- di 29. Purushottimpuri 30. Khadgavan 31. Re- vali.
6 Jalgaon	Jalgaon . . . All villages Pachora . . . Do. Amalner . . . Do. Parola . . . Do. Erandol . . . All villages except Chopda . . . Do. Bhusawal . . . All villages Jamner . . . All villages except Raver . . . All villages Yawal . . . All villages except Edalabad . . . All villages Peta Chalisgaon & Badgaon . . . All villages except	1. Erandol 2. Toli (Erandol) 3. Borgaon 4. Bokani 5. Bhambori (Toli) 1. Chopda 1. Jamner 2. Hiwarkheda 1. Sakali 1. Rokada 2. Vadada 3. Vadaji 4. Bhadgaon 5. Tongaon 6. Varkhed 7. Umarkheda 8. Loan 9. Gondgaon 10. Shiva- ni 11. Khedgaon 12. Junadri	
7 Dhulia	Taloda . . . All villages Shahade . . . Do. Shirpur . . . Do. Sindkheda . . . All villages Sakri . . . Do. Dhulia . . . Do. Navapur . . . Do. Akkalkuva . . . Do. Akarani Mahal . . . Do. Nandurbar . . . Do.		
8 Nasik	Niphad . . . All villages Yeola . . . Do. Nasik . . . Do. Malegaon . . . Do. Igatpuri . . . Do. Dindori . . . Do. Chandor . . . Do. Kalyan . . . Do. Baglan . . . Do. Nandgaon . . . Do. Paint Mahal . . . Do. Surgana Mahal . . . Do. Sinnar . . . All villages except	1. Chas. 2. Kasewadi 3. Sonewadi	

1

2

3

4

Ahmednagar . Ahmednagar . Do.

1. Chinchodi Patil
2. Sakat (Kd)
3. Ralen-ganj
4. Sarola
5. Val-unj
6. Kadgaon
7. Tand-
8. Walki
9. Bholegaon
10. Kudgaon
11. Jal
12. Bhatodi (Paragon)
13. Parwadi
14. Shandve
15. Baburdi Ghumat
16. Ukkadgaon
17. Mandhwa
18. Nalegaon
19. Chawran Budruk
20. Maliwadi
21. Cha-waran (Khurd)
22. Bhin-gar
23. Burudgaon
24. Wakodi
25. Ranjni
26. Khurjune
27. Dahigaon

Pathardi . . Do.

1. Karanji
2. Renkaiwadi
3. Mohoj (Kd)
4. Dongarwadi
5. Kolhar
6. Koradgaon
7. Shirapur
8. Kharwandi
9. Pimpalgaon
10. Kalas
- Pimpri
11. Tandali
12. Akola
13. Khandgaon
14. Bhhulgaon
- Vaiju
15. Kaudgaon (Athare)
16. Pimpalgaon
- Tapa
17. Tisgaon
18. Kadgaon
19. Lohsar
20. Joarwadi
21. Sonthan
22. Siral
- Chehondi
23. Mohj
- Devle
24. Mohoj BK
25. Gite-wadi
26. Mitsangawl
27. Dule Chandgaon
28. Satwad
29. Mali-Babulgaon

Akola . All villages except . 1. Mahenduri 2. Un-chkhedak (BK) 3. Au-rangpur 4. Kalas (Kd) 5. Vithe 6. Nilvandi 7. Chas 8. Tambhal 9. Dongergaon 10. Manoharpur 11. Sultnapur 12. Pipaldar 13. Dhuma-wadi 14. Thiigaon (Kd) 15. Thugapn (Bk) 16. Kotul 17. Dhaman-gaon-Pat 18. Deothan 19. Kolas (Bk) 20. Bogras 21. Akola 22. Ganora, 23. Parkatpur.

Newasa . . Do.

1. Newasa (Kd)
2. Nweasa (Bk)
3. Jainpur
4. Bhalgaon
5. Ghogargaon
6. Chinchbhan
7. Kara-gaon
8. Punatgaon
8. Pachgaon
9. Imampur
10. Tamaswadi
11. Khar-wandi
12. Hingoni
13. Kangoni
14. Washim.

I	2	3	4
9. Ahmednagar —contd.			
			15. Bodhegaon 16. Murma 17. Pravara- jangam 18. Toka 19. Wakdi 20. Mangalpur 21. Galnimb 22. War- khed 23. Ramdoh 24. Tuljanpur 25. Gidegaon 26. Ustal Khalasa 27. Kalegaon 28. Singwe Tukai 29. Kaatha 30. Mahalaxmi Hirne 31. Maka 30. Rajegaon 31. Dedgaon 32. Deo- gaon 35. Ranjangaon 36. Amalner.
Shevgaon	.	All villages except	1. Dhorsade Antre 3. Samahgaon 4. Wadule (Bk) 5. Malegaon 6. Dhor-Jalgaon 7. Shahaj pur 8. Bhagur 9. Sheo- gaon 10. Jorapur 11. Karjat (Bk) 12. Bhor Chadgaon 13. Ghewari 14. Hingaon- gaon 15. Nihali 16. Nampur 17. Agar Nandur 18. Kherdi 19. Garkwadi Jalgaon 20. Warur Bk. 21. Waru (Kd) 22. Sukuli 23. Kambi 24. Lakdhe- phal 25. Hatgaon 26. Guglegaon 27. Mungi 28. Chapadgaon 29. Kharadgaon 30. Akhe- gaon 31. Ranegaon 32. Golegaon 33. Adhodi 34. Dewane 35. Nimbori 36. Dahe- gaon (NE) 37. Ran- jani 38. Shahar Takli 39. Amrapur.
Sangamner	.	Do.	1. Dhandarphal (Bk) 2. Dhandarphal (Kd) 3. Nandul-Dumala 4. Kasara Dumala 5. Kautha Dhandarphal 6. amnapur 7. Vad- gaSn-Pan 8. Kohewadi 9. Nimgaon-Tali 10. Waghapur 11. Shira- pur 12. Ambli-Khalasa 13. Ghargaon 14. Man- dve 15. Sakur 16. Pem- giri 17. Nimgaon (BK) 18 Nimgaon (Kd) 19. Sangawi 20. Sawarchol 21. Wadgaon-Landga 22. Sangamner 23. Umbari 24. Pandodi.
Jamkhed	.	Do.	1. Satephal 2. Shiur 3. Mannaj (Nannajwadi) 4. Jawala 5. Agni 6. Chondi 7. Pimpalkhed

1	2	3	4
9.	Ahmednagar— <i>contd.</i>		
	Parner . . . All villages except.		8. Arangaon 9. Ghodegaon 10. Sarola 11. Padali 12. Dighol 13. Janked 14. Khandgaon.
	Karjat . . . Do. .		1. Malkup 2. Randha 3. Palwe (Kd) 4. Malwani 5. Bhalwani 6. Astgaon
	Kopergaon . . . Do.] .		1. Sitapur 2. Nagapur 3. Nagawadi 4. Bham-bora 5. Thugaon 6. Hingangaon 7. Ambli Jalgaon 8. Mirajgaon 9. Nimgaon (Bk) 10. Nimgaon (Kd) 11. Kambali 12. Belgaon 13. Dighi.
	Shriampur † . . . Do.		1. Kokanthen 2. Puntamba 3. Nategaon 4. Rujaya Dahukh 5. Dhotre 6. Kopergaon 7. Kopergaon Bet.
	Rahuri . . . Do. .		1. Nawoor 2. Mathlthal 3. Kolhar 4. Undergaon 5. Jallamhol 6. Rampur.
	Shirgonda . . . Do. .		1. Sade 2. Wagholi 3. Akheda.
			1. Hangewai 2. Shrigonda 3. Chimbale 4. Yelpane 5. Arvi 6. Anagar 7. Sangvi 8. Mandavgaon 9. Banpimpri 10. Pimpalgaon 11. Kautha 12. Ghogargao 13. Tondoli.
10	Sholapur . . . Pandharpur . . . Do. .		1. Bhalwani 2. Ambe 3. Nipatgaon 4. Degaon 5. Puliwad.
	Malsiras . . . Do. .		1. Pilliv 2. Karand 3. Dharampuri 4. Akhuj.
	Mangalwdha . . . Do.		1. Mangalwedha 2. Dharamgaon 3. Machnur 4. Dikshal 5. Tamderdi 6. Mundewadi 7. Borali 8. Nimborni.
	Sangola . . . Do. .		1. Rajapur 2. Amjale 3. Nagaj.
	Karamala . . . Do. .		1. Bhalewadi 2. Karanje 3. Khambewadi 4. Karamala 5. Mirajwal 6. Borgaon, 7. Dilmevan 8. Khadki 9. Bitergaon 10. Potegaon 11. Balewadi 12. Pophalas.
	Madha . . . Do. .		1. Madha 2. Temburni
	Barsi . . . Do.		1. Barsi 2. Korphale 3. Malwandi 4. Trle 5. Upale 6. Hatiz 7. Gondwan 8. Balgaon 9. Kasbe (Tadwale) 10. Sakat (Pimpri) 11. Yedsi

1	2	3	4	5
10	Sholapur—contd.			12. Aljapur 13. Bhatmbre 14. Zadi 15. Puri 16. Dhanore 17. Janpur 18. Mundewadi 19. Kawe 20. Pangaon 21. Halduge 21. Raulgaon
	North Sholapur	All villages		
	South Sholapur	Do.		
	Mohal	Do.		
	Akkalkot	All villages except		1. Akkalkot 2. Hannur 3. Barhanpur 4. Dudhani 5. Sinnar 6. Jeur 7. Karajgi 8. Mangrul 9. Dahitane 10. Chapal- gaon 11. Nanhegaon 12. Kajikaubus 13. Udgai 14. Tolnur 15. Maindargi 16. Salagar
11	Satara	Patan	Do.	1. Adoul 2. Nisre 3. Mal- harpeth 4. Navdi.
	Satara	All villages		..
	Phaltan	Do.		..
	Khandala	Do.		..
	(Petha)			
	Karad	All Villages except		1. Kasr Sirume 2. Wathar 3. Kale 4. Belwade 5. Malkhed 6. Retre (Kd) 7. Kalwade 8. Ond 9. Nandgaon 10. Masur 11. Undale 12. Atke 13. Salshirmbe 14. Mandu 15. Wing 16. Goleshwar 17. Kapil 18. Nandlapur 19. Chce- gaon 20. Potale 21. Yenke 22. Pane 23. Kirpe 24. Tombve 25. Satur 26. Warnjee 27. Yerale 28. Kolewadi 29. Kusur 30. Kole 31. Ambawade 32. Karad 33. Mundire 34. Karve 35. Gote 36. Shenoli 37. Shere 38. Kakawadi 39. Retre(BK) 40. Parle 41. Koparde 42. Bang- wadi 43. Wadgaon 44. Masur 45. Chikhali 46. Kirpade 47. Wadul- bhikeshwar 48. Sapne 49. Mhopare 50. Velh 51. Nisure 52. Mauli 53. Ghoshi 54. Waha- gaon 55. Hurgoli 56. Korti 57. Wadgaon 58. Shurgaon 59. Belwadi (N) 60. Kodoli
	Man	All villages		..
	Jaoli	Do.		..
	Mahableshwar	Do.		..
	Wai	Do.		..
	Khatav	Do.		..
	Koregaon	Do.		..

1	2	3	4
12	Poona	<p>Haveli . . All villages ..</p> <p>Shirur . . Do. ..</p> <p>Baramati . . Do. ..</p> <p>Indapur . . Do. ..</p> <p>Dhond . . All villages except 1. Khanota 2. Lonarwadi 3. Rajgaon 4. Hingni berdi.</p> <p>Maval . . All villages ..</p> <p>Musli . . Do. ..</p> <p>Bhor . . Do. ..</p> <p>Purandur . . Do. ..</p> <p>Khed . . Do. ..</p> <p>Velhe . . Do. ..</p> <p>Junnar . . All villages except 1. Ottur 2. Pipalwadi 3. Ale 4. Belha 5. Rajuri 6. Bori(Bk) 7. Bori(Kd) 8. Vadegaon (Anand).</p> <p>Ambegaon . . All villages ..</p>	
13	Kolhapur	<p>Shahuwadi . . Do. ..</p> <p>Pandala Mahal . . Do. ..</p> <p>Bhudargad . . Do. ..</p> <p>Chandgad . . All villages except 1. Trimad.</p> <p>Ajra Mahal . . Do. 1. Bhairawade.</p> <p>Bavada Mahal . . All villages ..</p> <p>Radhanagari . . Do. ..</p> <p>Gadhingao . . All villages except 1. Gadhinglaj 2. Dundga 3. Hebbal 4. Nelji 5. Mutnal 6. Hitni 7. Hasur champu 8. Madal 9. Hanimnal 10. Auranal 11. Shendri 12. Giza- wana 13. Belgundi 14. Jakkewadi 15. Bek- nal 16. Kadegaon 17. Nul 18. Jarali 19. Mugali 20. Bhadgaon 21. Chaneku- ppi 22. Khamlchatti 23. Tanawadi 24. Harli Budruk 25. Harli Khurda 26. Warang- wadi 27. Haninghal 28. Chinchwadi 29. Halkarni 30. Kadalge 31. Nag- noor 32. Aral'gundi 33. Basarge 34. Basarge (KD) 35. Iadargucchi 36. Chandenkud 37. Kumbalhai 38. Khan- dal 39. Terani 40. Karvalikatti 41. Bugadi- katti 42. Nandanwad 43. Manwad 44. Mana- puri.</p> <p>Kagal . . All villages.</p> <p>Karvir . . All villages except 1. Sangvade 2. Halsavade 3. Vagade 4. Gad- Mudsingi 5. Uchgaon 6. Nerli 7. Tamgaon 8. Kanheri.</p>	

1	2	3	4
13. Kolhapur— <i>contd.</i>	Hatkanangale	All villager	1. Pattannkodoli 2. Ingal 3. Kumbhoj 4. Hingan- gaon 5. Nej 6. Alte 7. Narande 8. Vathar 9. Kochi 10. Bhendvade 11. Ninche 12. Bhandole 13. Vadgain 14. Kini 15. Ghunki 16. Talsande 17. Padli 18. Ambap 19. Vathar (M) 20. Top 21. Vadgaon.(B) 22. Nagaon 23. Halondi 24. Chan- dur 25. Rui 26. Rukadi 27. Kabnur 28. Tilvanī 29. Ichalkaranji 30. Koro- chi 31. Tardal 32. Hat- kanangale 33. Majale 34. Mangaon 35. Hupri 36. K. Sangav 37. M. Sangav 38. Rendal 39. Rangoli 40. Jangamwad 41. Talandge 42. Yal- gud.
14 Sangli	Jath Khanapur (Includ- ing Atpadi Mahal)	All villages except. Do.	1. Madgyal. 1. Upale 2. Yetgaon 3. Ambak 4. Balavadi 5. Nagavadi 6. Kadegaon 7. Deorastre 8. Chikal- kole 9. Gharnikhi 10. Kharsundi 11. Zhare 12. Atpadi 13. Gaur- wadi.
	Shirala Mahal	All villages.	
	Tasgaon	All villages except.	1. Bhilwadi 2. Vasagade 3. Bramhanal 4. Khatav 5. Kawathe (e) 6. Shir- gaon (K) 7. Burli 8. Tasgaon, 9. Nagaon, (K) 10. Bendri 11. Bore- gaon 12. Shirgaon (V) 13. Nagaon (N) 14. Dhavli 15. Turchi 16. Kumtha 17. Dhulgaon 18. Mane-Rajuri 19. Nagrale 20. Kundal 21. Gawan.
	Miraj Kauthe Manval	All villages except.	1. Desing 2. Haroli 3. Kharsing 4. Alkud 5. Shirdon 6. Borgiaon 7. Kuktoli 8. Dudhagaon 9. Sawalwadi 10. Mola- kumbhoj 11. Sone 12. Bhose 13. Putgaon 14. Karoli Soni 15. Salagre 16. Arag 17. Bolwad 18. Bedag 19. Belanki 20. Dhavli 21. Erondole 22. Gundewadi 23. Khan- derajuri 24. Khatav 25. Lingnoor 26. Malegaon 27. Mahisal 28. Male- vadi 29. Narwad 30. Shipoor 31. Takli 32. Waddi 33. Miraj 34. Nilje 35. Kupawade

1	2	3	4
14	Sangli— <i>contd.</i>		<p>36. Kalambi 37. Kanadwadi 38. Manmodi 39. Sawali 40. Kakadadi 41. Ankali 42. Bamni 43. Dhamni 44. Tannang 45. Nandura 46. Samdoli 47. Mulje Digrej 48. Katnal 49. M. Sangaliwadi 50. Kavalpur 51. Sangli 52. Bior 53. Hari-pur 54. Kharkatwadi 55. Sambarwadi 56. Rasulwadi 57. Budhgaon 58. Padmale 59. Madhav-nagar 60. Kasbe Digras 61. Tung 62. Kavtha Piran.</p>
	Walva Taluka	All villages except	<p>1. Peth 2. Kamari 3. Yeder-pani 4. Tandulwadi 5. Bahadurwadi 6. Kane-gaon 7. Sur 8. Ozarde 9. Pathare Dharan 10. Urin 11. Islampur 12. Kapuskhed 13. Rethare Harnay 14. Sakhrate 15. Bahe 16. Kasegaon 17. Shene 18. Wategaon 19. Tambre 20. Nerle 21. Kedarwadi 22. Kala wadi 23. Bhatwadi 24. Dhotrewadi 25. Yewalwadi 26. Bahewadi 27. Satpewadi 28. Pharne-wadi 29. Ashta 30. Bagni 31. Pokharni 32. Shi-gaon 33. Nagaon 34. Koregaon 35. Gotkaundi 36. Bavchi 37. Walwa 38. Shivgaon 39. Bhad-kimbe 40. Gatarwadi.</p>
15	Ratnagiri	<p>Mandgad Papoli Khed Guhagar Chiplun Ratnagiri Sangameshwar Lanja Bajapur Deogad Kankawali Malwan Kudal Vengurla Sawantwadi</p>	<p>All villages Do. Do. Do. Do. Do. Do. Do. Do. Do. Do. Do. Do. Do. Do.</p>
16	Thana	<p>Dhanu Mukhada Jawar Wada Palghar Bessin</p>	<p>All villages Do. Do. Do. Do. Do.</p>

1	2	3	4
16. Thana— <i>contd.</i>	Bhiwandi . . .	All villages	
	Shahapur . . .	Do.	
	Murbad . . .	Do.	
	Kalyan . . .	Do.	
	Talsari (Mahal) . .	Do.	
17. Kotaba . . .	Karjat . . .	All villages	
	Panvel . . .	Do.	
	Uran . . .	Do.	
	Khalapur . . .	Do.	
	Pen . . .	Do.	
	Alibag . . .	Do.	
	Sudhgad . . .	Do.	
	Roha . . .	Do.	
	Murud . . .	Do.	
	Mangaon . . .	Do.	
	Shrivardhan . . .	Do.]	
	Mhasala . . .	Do.	
	Mahad . . .	Do.	
	Poladpur . . .	Do.	

[No. CER 9/68.]

D. N. LAL, Collector.

CENTRAL EXCISE COLLECTORATE, DELHI

CENTRAL EXCISES

Delhi, the 4th November 1968

S.O. 3993.—In exercise of the powers conferred by Rule 5 of the Central Excise Rules, 1944, I, Collector of Central Excise, Delhi, hereby empower the Central Excise Officers not below the rank specified in Column (2) of the following table, to exercise within their respective jurisdictions in the Central Excise Collectorate, Delhi, the powers of the 'Collector' under the Central Excise Rules mentioned in Column (3) of the said table, subject to the limitations set out in Column (4) thereof:

TABLE

S. No.	Rank of Officers	Central Excise Rules	Limitations
1	2	3	4
1.	Assistant Collector	52A	To authorise removals on documents, other than Gate Pass in statutory form, provided the other documents so approved should contain all information as in the statutory form of Gate Pass.
2.	Assistant Collector.	173G(4)	To grant exemption from maintaining account in R.G.I. (for assessee's working under the self Removal Procedure), in case an assessee is maintaining satisfactory private accounts from which all information, as required in the above R.G.I. can be readily obtained.

[No. 9/68.]

R. PRASAD, Collector.

MINISTRY OF COMMERCE**CARDAMOM CONTROL***New Delhi, the 29th October 1968*

S.O. 3994.—In exercise of the powers conferred by sub-section (3) of section 4 of the Cardamom Act, 1965 (42 of 1965), the Central Government hereby appoints Shri S. N. Agrawal, Assistant Financial Adviser, Ministry of Finance (Commerce Division) as a member of the Cardamom Board in the place of Shri R. Mahadevan, Deputy Secretary, Ministry of Finance (Commerce Division) who has resigned from the membership of the Board and directs that the following amendment shall be made in the notification of the Government of India in the Ministry of Commerce No. S.O. 1200, dated the 14th April, 1966, namely :—

In the said notification, for the entry in the first column against serial No. 8, the following entry shall be substituted, namely :—

“Shri S. N. Agrawal, Assistant Financial Adviser, Ministry of Finance (Commerce Division), New Delhi.”

[No. F. 29(21)/Plant(B)/64.]

B. KRISHNAMURTHY, Under Secy.

(Office of the Chief Controller of Imports and Exports)**ORDER***New Delhi, the 22nd July 1968*

S.O. 3995.—In exercise of the powers conferred by Clause 9 of the Imports (Control) Order, 1955 dated 7th December, 1955 as amended, the undersigned hereby cancels the Exchange Control Purposes Copy of import licence No. G/AU/1035224/C/XX/27/CH/26 dated 19th April, 1968 for the import of 10 cases of Scotch Whisky valued at Rs. 1100/- issued in favour of the Ministry of External Affairs, New Delhi.

The reasons for the cancellation is that the Exchange Control Purposes Copy was surrendered by the party for cancellation as no longer required by them.

[No. Cent/11/68-69/PLS.]

S. A. SESHAN,

Dy. Chief Controller of Imports and Exports,
for Chief Controller of Imports and Exports.

(Office of the Jt. Chief Controller of Imports and Exports)**(Central Licensing Area)****ORDERS***New Delhi, the 16th October 1968*

S.O. 3996.—M/s. Shamrock Industries, Mile 13/3, Mathura Road, P.O. Amar Nagar, near Faridabad were granted an Import Licence No. P/SS/1608811/C/XX/25/C/D/25/26 dated 7th December, 1967 for the Import of Glassine and Vegetable Parchment paper and German Silver Scrap for General area for Rs. 10,000/- (Rupees Ten thousand only). They have applied for the issue of a duplicate copy of the Customs purposes thereof on the ground that their original copy has been lost/misplaced, without having been utilised and without having been registered with any customs house,

2. The applicant have filed an affidavit, in support of their contention as required under para 299(2) read with appendix-8 of the I.T.C. hand book of rules and procedure, 1968. I am satisfied, the original customs purposes copy has been lost/misplaced.

3. In exercise of the powers conferred on me, under clause 9(cc) imports (control) order, 1955, dated 7th December, 1955, as amended upto date, I order cancellation of the customs purposes copy of the Import licence No. P/SS/1608811/C/XX/25/CD/25/26 dated 7th December, 1967.

4. The applicant are now being issued a duplicate copy of the custom purposes copy of the said Import Licence, in accordance with para 299(2), I.T.C. hand book of rules and procedure, 1968.

[No. F. S-6/AM.68/AU-HRH/OLA/2170.]

New Delhi, the 17th October 1968

S.O. 3997.—M/s. ChemiPLEX Laboratories, 545, Grain Market, Ambala Cantt. were granted an import licence No. P/SS/1610874/C/XX/25/CD/25/26 dated 30th March, 1968 for the import of Drugs and Medicines for General Area for Rs. 4,537/- (Rupees four thousand five hundred and thirty seven only). They have applied for the issue of a duplicate copy of the Customs Purposes copy thereof, on the ground that their original copy has been lost/misplaced, without having been utilised and without having been registered with any Customs House.

2. The applicant have filed an affidavit, in support of their contention as required under para 299(2) read with appendix-8 of the I.T.C. Hand Book of Rules and Procedure, 1968. I am satisfied, the original customs purposes copy has been lost/misplaced and.

3. In exercise of the powers conferred on me, under clause 9(cc) Imports (Control) Order, 1955, dated 7th December, 1955, as amended upto date, I order cancellation of the customs purposes copy of the import licence No. P/SS/1610874/C/XX/25/CD/25-26 dated 30th March, 1968.

4. The applicant are now being issued a duplicate copy of the Customs Purposes of the said import licence, in accordance with para 299(2), I.T.C. Hand Book of Rules and Procedure, 1968.

[No. F. C-6/HAR/AM.68/AU/HRH/CLA/2224.]

New Delhi, the 19th October 1968

S.O. 3998.—A licence No. P/SS/1608765/C dated 1st December, 1967, of the value of Rs. 2380/- for the import of Zinc was issued to M/s. Gupta Iron and Steel Galvanising Works, G. T. Road, Mandi Govindgarh.

2. Therefore, a show cause notice No. G-7/68/ENF/CLA/5673 dated 9th September, 1968 was issued asking them to show cause within 15 days as to why the said licence in their favour should not be cancelled on the ground that the Central Government is satisfied that the licence will not serve the purpose for which it has been granted in terms of Clause 9, sub-clause (cc) of the Imports (Control) Order, 1955.

3. In response to the aforesaid show cause notice, M/s. Gupta Iron and Steel Galvanising Works, G. T. Road, Mandi Govindgarh, have not furnished any explanation.

4. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the licence in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned, in exercise of the powers vested in him under Clause 9 sub-clause (cc) of the Imports (Control) Order, 1955 hereby cancel the licence No. P/SS/1608765/C dated 1st December, 1967 for Rs. 2380/- issued in favour of M/s. Gupta Iron and Steel Galvanising Works, G. T. Road, Mandi Govindgarh.

[No. G-7/68/ENF/CLA/7160.]

S.O. 3999.—A licence No. P/SS/1608444/C dated 6th November, 1967 of the value of Rs. 800/- for import of Copper and Zinc was issued to M/s. Jyoti Mechanical Works, G. T. Road, Batala.

2. Thereafter, a show cause notice No. G-7/68/ENF/CLA/5495 dated 6th September, 1968 was issued asking them to show cause within 15 days as to why the said licence in their favour should not be cancelled on the ground that the Central Government is satisfied that the licence will not serve the purpose for which it was granted in terms of Clause 9, sub-clause (cc) of Imports (Control) Order, 1955.

3. In response to the aforesaid show cause notice, M/s. Jyoti Mechanical Works, G. T. Road, Batala have not furnished any explanation.

4. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the licence in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned, in exercise of the powers vested in him under Clause 9 sub-clause (cc) of the Imports (Control) Order, 1955 hereby cancel the licence

No. P/SS/1608444/C dated 6th November, 1967 for Rs. 800/- issued in favour of M/s. Jyoti Mechanical Works, G. T. Road Batala.

[No. G-7/68/ENF/CLA/7248.]

New Delhi, the 25th October 1968

S.O. 4000.—M/s. Paris Foundry and Works, G. T. Road, Batala were granted import licence Nos. P/S/1611403/C/XX/27/D/25.26 dated 28th May, 1968 and P/S/1611404/C/IN/27/D/25.26 dated 28th May, 1968 for the import of Taper Roller Bearings other than those specified in appendix 14(6) of Am. 69 Red Book Vol. I under I.T.C. S. No. 19(3) (1)(B)/II for Rs. 1500/- each. They have applied for issue of a duplicate copies of the Customs Purposes copies thereof, on the ground that original copies of the Customs Purposes copies have been lost/misplaced without having been registered with Bombay Customs House.

2. The applicant's have filed an affidavit in support of their contention as required under para. 299(2) of I.T.C. Hand Book of Rules and Procedure, 1968. I am satisfied that the original Customs Purposes copies have been lost/misplaced.

3. In exercise of the powers conferred on me under section 9(cc) Imports (Control) Order, 1955 dated 7th December, 1955, I order the cancellation of the Customs Purposes copies of import licences Nos. P/S/1611403/C/XX/27/4/25.26 dated 28th May, 1968 and P/S/1611404/C/IN/27/D/25.26 dated 28th May, 1968.

4. The applicant is now being issued a duplicate Customs copies of these licences, in accordance with para. 299(1) of I.T.C. Hand Book of Rules and Procedure, 1968.

[No. IDA/85(ii)/AM.68/AU.PB/CLA/2843.]

S.O. 4001.—M/s. Subash Engineering Works, Kashmir Road, Batala were granted import licence No. P/SS/1611084/C/XX/25/C-D/25.26 dated 1st May, 1968 and P/SS/1611085/C/XX/25/C-D/25.26 dated 1st May, 1968 for the import of Roller Bearings other than those specified in appendix 14(5) of AM. 69 Red Book and Taper Roller Bearings other than those specified in appendix 14(6) of AM. 69 period Red Book Vol. I under I. T. C. Sr. Nos. 19(2)(1)(B)/II and 19(3)(1)(B)/II respectively for Rs. 1500/- each. They have applied for issue of a duplicate copies of Customs Purposes copies thereof on the ground that original Customs Purposes copies have been lost/misplaced without having been registered with any Custom authority.

2. The applicants have filed an affidavit in support of their contention as required under para 299(2) of I.T.C. Hand Book of Rules and Procedure, 1968. I am satisfied that the original Customs Purposes copies have been lost/misplaced.

3. In exercise of the powers conferred on me under section 9(cc) Imports (Control) Order, 1955 dated 7th December, 1955, I order the cancellation of Customs Purposes copies of import licence Nos. P/SS/1611084/C/XX/25/C-D/25.26 dated 1st May, 1968 and P/SS/1611085/C/XX/25/C-D/25.26 dated 1st May, 1968.

4. The applicant is now being issued a duplicate copy of the Customs Purposes of these licence, in accordance with the provision of para 299(1) of I.T.C. Hand Book of Rules and Procedure, 1968.

[No. I.D.A./38(ii)/AM.68/AU.PB/CLA/2844.]

New Delhi, the 29th October 1968

S.O. 4002.—M/s. Chemplex Laboratories, 545, Grain Market, Ambala Cantt. were granted an import licence No. P/SS/1610874/C/XX/25/CD/25/26 dated 30th March, 1968 for the import of Drugs and Medicines for General Area for Rs. 4,537/- (Rupees four thousand five hundred and thirty seven only). They have applied for the issue of a duplicate copy of the Customs Purposes copy thereof, on the ground that their original copy has been lost/misplaced, without having been utilised and without having been registered with any Customs House.

2. The applicants have filed an affidavit, in support of their contention as required under para 299(2) read with appendix 8 of the I.T.C. Hand Book of Rules and Procedure, 1968. I am satisfied, the original customs purposes copy has been lost/misplaced and

3. In exercise of the powers conferred on me, under clause 9(CC) Imports (Control) Order, 1955, dated 7th December, 1955, as amended upto date, I order cancellation of

the customs purposes copy of the import licence No. P/SS/1610874/C/XX/25/CD/25-26 dated 30th March, 1968.

4. The applicants are now being issued a duplicate copy of the Customs Purposes of the said import licence, in accordance with para 299(2), I.T.C. Hand Book of Rules and Procedure, 1968.

[No. F. C-6/HAR/AM.68/AU-HRH/CLA/2251.]

New Delhi, 2nd November 1968

S.O. 4003.—M/s. Raj Radio Corporation, College Road, Moga were granted import licence No. P/SS/1619860/C/XX/25/C-D/25.26 dated 17th February, 1968, for the import of Gauge Condensers air die electric 2. Gauge condensor P.V.C. type 3. Iron dust Cores not exceeding 2" in length upto 10 per cent of the face value of the licence in respect of item No. 1 and 3 only. They have applied for issue of duplicate copy of Customs purposes and Exchange Control copies thereof, on the ground that original copies has been damaged without having been registered with any Customs authority and without having been utilised at all.

2. The applicant have filed an affidavit in support of their contention as required under para 299(2) of I.T.C. Hand Book of Rules and Procedure, 1968. I am satisfied that the original Custom and Exchange Control copies have been damaged.

3. In exercise of the powers conferred on me under Section 9(cc) Import (Control) Order, 1955 dated 7th December, 1955, I order the cancellation of Custom and Exchange Control copies of licence No. P/SS/1609860/C/XX/25/C-D/25.26 dated 17th February, 1968.

4. The applicant is now being issued a duplicate copy of Custom and Exchange Control copies of this licence in accordance with para. 299(1) of I.T.C. Hand Book of Rules and Procedure, 1968.

[No. F. N.P. 116/AM.68/AU.PB/CLA.]

J. S. BEDI,

Joint Chief Controller of Imports and Exports.

(Office of the Joint Chief Controller of Imports and Exports)

ORDER

Calcutta, the 30th October 1968

S.O. 4004.—A licence No. P/S/1628932/C/XX/27/C/25-26 dated 4th June, 1968, of the value of Rs. 800/- for import of Cloves was issued to M/s. Ghose Bros. (Perfumers), 50, Ezra Street, Calcutta subject to the conditions as under :—

(a) all items imported under it shall be used only in the licence holders' factory at the address shown in the application against which the licence is issued and no portion thereof will be utilised by the licence for a unit/purpose other than the one for which the licence in question is issued, or will be sold or permitted to be utilised by any other party. The licensee shall maintain proper account of consumption and utilisation of the goods imported against the licence.

2. Thereafter, a show cause notice No. 163/68/E&L dated 20th September, 1968 was issued asking them to show cause within 15 days as to why the said licence in their favour should not be cancelled on the ground that the licence in question was issued through inadvertence as the item in question was canalised one in terms of Clause 9, sub-clause (a).

3. In response to the aforesaid show cause notice, M/s. Ghose Bros. (Perfumers) 40, Ezra Street, Calcutta had, by their letter dated 18th October, 1968 furnished a detailed explanation. In their said reply the firm have not stated anything clearly.

4. The undersigned has carefully examined the said representation and has come to the conclusion that the licence was issued through inadvertence.

5. Having regard to what has been stated in the preceding paragraph, the undersigned is satisfied that the licence in question should be cancelled or otherwise rendered ineffective. Therefore, the undersigned, in exercise of the powers vested in him under Clause 9 sub-clause (a) of the Imports (Control) Order, 1955 hereby cancel the licence

No. P/S/1628932/C/XX/27/C/25-26 dated 4th June, 1968, for Rs. 800/- issued in favour of M/s. Ghose Bros. (Perfumers) 50, Ezra Street, Calcutta.

[No. 163/68/E&L.]

J. MUKHERJI,

Dy. Chief Controller of Imports and Exports.

MINISTRY OF FOOD, AGRICULTURE, C. D. & CO-OPERATION

(Department of Agriculture)

ORDER

New Delhi the 25th October 1968

S.O. 4005.—In exercise of the powers conferred by Section 5 of the Essential Commodities Act, 1955 (10 of 1955) the Central Government hereby directs that the powers conferred on it by sub-section (1) of section 3 of the said Act to make orders to provide for the matters specified in clause (b) of sub-section (2) thereof, shall, in relation to the Arable Land (Utilisation of Food Crops) Order, 1963, be exercisable also by the Lieutenant Governor of Himachal Pradesh subject to the condition that the said power shall be exercised according to such directions, if any, as may be issued by the Central Government in this behalf.

[No 20-59/65-Lands(M).]

SARAN SINGH, Jt. Secy.

खाद्य, कृषि, सामुदायिक विकास तथा सहकारिता मंत्रालय
(कृषि विभाग)

आदेश

नई दिल्ली, 25 अक्टूबर 1968

एस० ओ० 4006.—अनिवार्य जिन्स अधिनियम, 1955 (1955 का 10) की धारा 5 के अन्तर्गत प्रदत्त अधिकारों का उपयोग करते हुए, केन्द्रीय सरकार एतद् द्वारा निदेश देती है कि उक्त अधिनियम की धारा 3 की उपधारा (1) के अन्तर्गत उसे दिए गए अधिकार, जिनके द्वारा कृषि योग्य भूमि (खाद्य फसलों के उपयोग) आदेश 1963 के सम्बन्ध में उसकी उपधारा (2) के खण्ड (बी) में वर्णित विषयों से सम्बन्धित आदेश निकालने की व्यवस्था है, हिमाचल प्रदेश के उप-राज्यपाल द्वारा भी प्रयोग किए जा सकेंगे बशर्ते कि उक्त अधिकार ऐसे निदेशों के अनुसार प्रयोग में लाये जायें, जो बने हुए हों या जो इस सम्बन्ध में केन्द्रीय सरकार द्वारा निकाले जायें।

[संख्या 20-59/65-भूमि (एम०)]

शरण सिंह,

संयुक्त सचिव, भारत सरकार।

MINISTRY OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS

(Department of Industrial Development)

New Delhi, the 2nd November 1968

S.O. 4007/IDRA/6/10/68.—In exercise of the powers conferred by Section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951) read with rule 5(1) of the Development Councils (Procedural) Rules, 1952, the Central Government hereby appoints,

till the 16th August, 1970, Shri Arjun Arora, a Member of the Rajya Sabha to be a member of the Development Council for the scheduled industries engaged in the manufacture or production of Drugs and Pharmaceuticals established by the Order of the Government of India in this Ministry's Order No. S.O. IDRA/6/6/68 dated the 17th August, 1968 and directs that the following amendments shall be made in the said Order, namely:—

In the said Order, after entry No. 28, the following entry shall be inserted, namely:—

"29. Shri Arjun Arora, Member (Rajya Sabha), 90, Shah Jahan Road, New Delhi."

[No. 13(1)/68-LC.]

R. C. SETHI, Under Secy.

(Department of Industrial Development)

NOTIFIED ORDER

New Delhi, the 19th August 1968

S.O. 4008.—In exercise of the powers conferred by Section 18A of the Industries (Development and Regulation) Act, 1951 (65 of 1951) the Central Government hereby extends the term of appointment of Shri S. N. Lahiri, as the Authorised Controller of the IEW for a period of three months from 11th June, 1968 upto and inclusive of 10th September, 1968.

[No. 1(2)/68-LEEIO.]

N. SIVARAMAN, Under Secy.

(Indian Standards Institution)

New Delhi, the 28th October 1968

S.O. 4009.—In pursuance of sub-regulation (4) of regulation 14 of the Indian Standards Institution (Certification Marks) Regulations 1955, as amended from time to time, the Indian Standards Institution hereby notifies that licence No. CM/L-540, particulars of which are given below, has been cancelled with effect from 1 July 1968:

Licence No. & Date	Name & Address of the licensee	Article/Process covered by the licence cancelled	Relevant Indian Standard
CM/L-540 13 May 1963	M/s. Prem Industrial Corporation, B. 10/11 Industrial Estate, Guindy, Madras-32.	Hard-drawn stranded aluminium and steelcored aluminium conductors for overhead power transmission purposes.	IS: 398-1961 Specification for Hard-drawn stranded aluminium and steelcored aluminium conductors for overhead power transmission purposes. (Revised).

[No. CMD/55 : 540.]

(Dr.) A. K. GUPTA,
Deputy Director General.

MINISTRY OF PETROLEUM AND CHEMICALS

New Delhi, the 28th October 1968

S.O. 4010.—Whereas it appears to the Central Government that it is necessary in the public interest that the transport of Petroleum from G.G.S. V to Gas Flare Point in the (Kalo) Oil Field, in Gujarat State, Pipelines should be laid by the Oil and Natural Gas Commission and that for the purpose of laying such Pipelines, it is

necessary to acquire the Right of User in the land described in the Schedule annexed thereto.

2. Now, therefore, in exercise of the powers conferred by Sub-Section (i) of the Section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may, within 21 days from the date of this notification object to the laying of the pipeline under the land to the Competent Authority, at Geology Shed of O.N.G.C. (W.R.), near Central Workshop, Makarpura Road, Baroda-4 in the Office of the Gujarat Pipelines Project (Oil and Natural Gas Commission) Baroda. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

STATE : Gujarat.

DIST. : Mehsana.

TALUKA : Kalal.

(Laying pipeline from G.G.S.V. to Gas Flare Point)

Village	S. No.	Hectare	Are.	P. Are.
Isand	682	0	9	31
"	683	0	1	81

[No. 20/3/67-IOC.]

R. S. GOPALAN, Under Secy.

New Delhi, the 4th November 1968

S.O. 4011.--Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum between Barauni Refinery in Bihar State and Kanpur in Uttar Pradesh State, Pipeline should be laid by the Indian Oil Corporation Limited and that for the purpose of laying such Pipelines, it is necessary to acquire the right of user in the land of village Naubasta, of Tahsil Kanpur, District Kanpur described in the Schedule annexed hereto;

2. Now, therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

3. Any person interested in the said land may within 21 days from the date of this notification, object to the laying of the pipelines under the land to the Competent Authority, P.O. Box 58, Allahabad. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

SCHEDULE

STATE : Uttar Pradesh.

DIST. : Kanpur.

TAHSIL : Kanpur.

Village	Survey No.	Extent B—B—B	Survey No.	Extent B—B—B
Naubasta	39	0 12 5	711	0 1 0
	42	0 5 0	712	0 6 0
	44	0 6 0	713	0 8 0
	56	0 7 0	728	0 6 0
	57	0 2 0	729	0 7 0
	59	0 9 10	730	0 0 15
	60	0 9 10	740	0 6 0
	605	0 10 10	742	0 8 10
	606	0 6 0	743	0 2 10
	637	0 6 5	745	0 6 5
	710	0 7 10	885	0 3 0

[No. 28(10/68-OR 1

R. K. SINHA, Under Secy

DEPARTMENT OF COMMUNICATIONS

(P. & T. Board)

New Delhi, the 29th October 1968

S.O. 4012.—In pursuance of para (a) of Section III of Rule 434 of Indian Telegraph Rules, 1951, as introduced by S.O. No. 627 dated 8th March, 1960, the Director-General, Posts and Telegraphs, hereby specifies the 16th November, 1968 as the date on which the Measured Rate System will be introduced in BHUJ Telephone Exchange in Gujarat Circle.

[No. 5/66/68-PHB(2).]

New Delhi, the 4th November 1968

S.O. 4013.—In pursuance of para (a) of Section III of Rule 434 of Indian Telegraph Rules, 1951, as introduced by S.O. No. 627 dated 8th March, 1960, the Director-General, Posts and Telegraphs, hereby specifies the 16th December, 1968 as the date on which the Measured Rate System will be introduced in SATNA Telephone Exchange in Madhya Pradesh Circle.

[No. 5-68/68-PHB(2).]

D. R. BAHL,

Assistant Director General (PHB).

संचार विभाग

(डाक-तार बोर्ड)

नई दिल्ली, 29 अक्टूबर 1968

एस० ओ० 4014.—स्थायी आदेश क्रमसंख्या 627, दिनांक 8 मार्च, 1960 द्वारा लागू किए गए 1951 के भारतीय तार नियमों के नियम 434 के खंड III के पैरा (क) के अनुसार डाक-तार महानिदेशक में भुज टेलीफोन केन्द्र में 16-11-68 से प्रमाणित दर प्रणाली लागू करने का निश्चय किया है।

[सं० 5-66/68-पी० एच० बी० (2).]

नई दिल्ली, 4 नवम्बर 1968

स्थायी आदेश क्रमसंख्या 4015.—स्थायी आदेश क्रमसंख्या 627, दिनांक 8 मार्च, 1960 द्वारा लागू किये गए 1951 के भारतीय तार नियमों के नियम 434 के खण्ड III के पैरा (क) के अनुसार डाक-तार महानिदेशक ने सतना टेलीफोन केन्द्र में 16-12-1968 से प्रमाणित दर प्रणाली लागू करने का निश्चय किया है।

[सं० 5-68/68-पी० एच० बी०]

डी० आर० बहल,

सहायक महानिदेशक (पी० एच० बी०)।

CENTRAL ELECTRICITY AUTHORITY

New Delhi, the 28th October 1968

S.O. 4016.—Consequent on his reversion to the Bihar State Electricity Board, Shri V. K. Sinha, relinquished charge of the post of Assistant Director in the Eastern Regional Electricity Board, Patna, on the afternoon of the 9th October, 1968.

[No. 20/1/65-Adm. I(PW).]

S.O. 4017.—In exercise of the power conferred by sub-section 6 of section 3 of the Electricity (Supply) Act, 1948, the Central Electricity Authority hereby appoints Shri K. N. Kalgal, Deputy Chief Engineer (Electricity), Mysore State Electricity Board, as Assistant Secretary, Southern Regional Electricity Board, Bangalore, with effect from the forenoon of the 11th October, 1968 until further orders.

[No. 21/2/67-Adm. I (PW).]

New Delhi, the 7th November, 1968

S.O. 4018.—In exercise of the power conferred by sub-section 6 of section 3 of the Electricity (Supply) Act 1948, the Central Electricity Authority hereby appoints Shri Kewal Krishan, Asstt. Director, Central Water & Power Commission (Power Wing) as Asstt. Secretary, Northern Regional Electricity Board, Ghaziabad with effect from the forenoon of the 31st October, 1968 until further orders.

S.O. 4019.—In exercise of the powers conferred by sub-section 6 of section 3 of the Electricity (Supply) Act, 1948, the Central Electricity Authority hereby appoints Shri Mahabir Prasad, Asstt. Director, Central Water and Power Commission (Power Wing) as Asstt. Director in the Eastern Regional Electricity Board, Patna, with effect from the forenoon of the 24th October, 1968, until further orders.

[No. 21/8/66-Admn.I(PW).]

M. M. DHAWAN, Under Secy.
for Chairman

MINISTRY OF HEALTH, FAMILY PLANNING AND U. D.

(Department of Health and U. D.)

New Delhi, the 31st October 1968

S.O. 4020.—In pursuance of clause (d) of section 4 of the All India Institute of Medical Sciences Act, 1956 (25 of 1956) the Central Government hereby nominates Shri I. S. Chandrakant, Joint Educational Adviser, Ministry of Education to be a member of the All India Institute of Medical Sciences, New Delhi *vice* Shri P. N. Kirpal resigned.

[No. F. 2-49/68-ME(PG).]

BHAGWATI SHARAN SINGH, Dy. Secy.

स्वास्थ्य, परिवार नियोजन एवं नगर विकास मंत्रालय

(स्वास्थ्य एवं नगर विकास विभाग)

नई दिल्ली, 31 अक्तूबर, 1968

एम० ओ० 4021.—अखिल भारतीय आयुर्विज्ञान संस्थान अधिनियम, 1956 (1956 का 25) की धारा 4 के खंड (घ) का पालन करते हुए केन्द्रीय सरकार एतद्वारा शिक्षा मंत्रालय में संयुक्त शिक्षा सलाहकार, श्री एल० एस० चन्द्रकान्त, को श्री पी० एन० कृपाल के स्थान पर, जिन्होंने त्यागपत्र दे दिया है, अखिल भारतीय आयुर्विज्ञान संस्थान, नई दिल्ली का एक सदस्य मनोनीत करती है।

[प० सं० 2-49/68-एम० इ० (पी० जी०)]

भगवती शरण सिंह, उप सचिव ।

(Department of Health & U.D.)

ORDER

New Delhi, the 7th November 1968

S.O. 4022.—Whereas by the notification of the Government of India in the late Ministry of Health No. F.5-14/58 MI, dated the 25th March, 1960, the Central Government has directed that the medical qualification M.D. granted by the Université Catholique de Louvain, Belgium, shall be a recognised medical qualification for the purposes of the Indian Medical Council Act, 1956 (102 of 1956);

And whereas Dr. Annie Marie Dutrieux who possesses the said qualification is for the time being attached to the Fatima Hospital and Maternity Home Thumbay, Kerala, for the purposes of charitable work;

Now, therefore, in pursuance of clause (c) of the proviso to sub-section (1) of section 14 of the said Act, the Central Government hereby specifies a period of two years from the date of publication of this Order in the Official Gazette, or the period during which Dr. Annie Marie Dutrieux is attached to the said Hospital and Maternity Home, whichever is shorter, as the period to which medical practice by the aforesaid doctor shall be limited.

[No. F.19-33/68-MPT.]

K. DEO, Under Secy.

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 7th November 1968

S.O. 4023.—In exercise of the powers conferred by Section 5(1) of the Cinematograph Act, 1952 and sub-rule (3) of rule 8 read with sub-rule 2 of rule 9 of the Cinematograph (Censorship) Rules, 1958, the Central Government after consultation with the Central Board of Film Censors, hereby appoints Shri Vicki Kapoor as member of the Advisory Panel of the said Board at Bombay with immediate effect.

[No.11/2/68-FC.]

H. B. KANSAL, Under Secy.

'संस्कृति और प्रसारण मंत्रालय

नई दिल्ली, 31 अक्टूबर 1968

एस० ओ० 4024.—चलचित्र अधिनियम, 1952 की धारा 5(1) और चलचित्र (सैंसर) नियमावली, 1958 के नियम 8 के उप नियम (3) के साथ पठित नियम 9 के उप नियम (2) द्वारा दिए गए अधिकारों का प्रयोग करते हुए, केन्द्रीय सरकार ने केन्द्रीय फिल्म सैंसर बोर्ड से परामर्श करके, एतद्द्वारा श्री विकी कापूर को अभी से उक्त बोर्ड के ब्रम्बर्ड सलाहकार मण्डल का सदस्य नियुक्त किया है ।

[फाईल संख्या 11/2/68-एफ० (सी)]

हरि वाबू कंसल, अवर सचिव

ORDER

New Delhi, the 1st November 1968

S.O. 4025.—In pursuance of the directions issued under the provisions of the enactments specified in the First Schedule annexed hereto the Central Government after considering the recommendations of the Film Advisory Board, Bombay hereby approves the film specified in column 2 of the Second Schedule annexed hereto in all its language versions to be of the description specified against it in column 6 of the said Second Schedule.

THE FIRST SCHEDULE

- (1) Sub-Section (4) of the Section 12 and Section 16 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952).
- (2) Sub-Section (3) of Section 5 and Section 9 of the Bombay Cinemas (Regulation) Act, 1953 (Bombay Act XI of 1953).

THE SECOND SCHEDULE

S. No.	Title of the film	Length 35 mm	Name of the Applicant	Name of the Producer	Whether a Scientific film or a film intended for educational pur- poses or a film dealing with news & current events or a documentar- film.
1	2	3	4	5	6
I	Maharashtra News No. 197	304.00 M	Director of Publicity, Government of Maharashtra, Bombay.		Film dealing with news and current events (For release in Maharash- tra Circuit only)

[No. F. 24/1/68-FP App.1300.]

BANU RAM AGGARWAL, Under Secy.

आदेश

नई दिल्ली— 1 नवम्बर 1968

सा० अ० 4026.—इसके साथ लगी प्रथम अनुसूची में निर्धारित प्रत्येक अधिनियम के उपर्युक्त के अन्तर्गत जारी किये गये निदेशों के अनुसार केन्द्रीय सरकार फिल्म सलाहकार बोर्ड बम्बई की सिफारिशों पर विचार करने के बाद एतद्वारा इसके साथ लगी द्वितीय अनुसूची के कालम 2 में दी गई फिल्म को उसके सभी भारतीय भाषाओं के रूपान्तरों सहित जिसका विवरण उसके सामने उक्त द्वितीय अनुसूची के कालम 6 में दिया हुआ है स्वीकृत करती है :—

प्रथम अनुसूची

- (1) चलचित्र अधिनियम 1952 (1952 का 37वां केन्द्रीय अधिनियम) की धारा 12 की उपधारा (4) तथा धारा 16।
- (2) बम्बई सिनेमा (विनियम) अधिनियम 1953 (1953 का 11वां बम्बई अधिनियम) की धारा 5 की उपधारा (3) तथा धारा 9।

द्वितीय अनुसूची

क्रम संख्या	फिल्म का नाम	फिल्म की लम्बाई 35 मि०मी०	आवेदक का नाम	निर्माता का नाम	क्या वैज्ञानिक फिल्म है या शिक्षा सम्बन्धी है या समाचार और सामयिक घटनाओं को फिल्म है या डाकुमेन्ट्री फिल्म है
1	2	3	4	5	6
1	महाराष्ट्र समाचार संख्या 197	304' 00 मि० मी०	प्रचार निदेशक महाराष्ट्र सरकार लम्बई।		समाचार और साम- यिक घटनाओं से सम्बन्धित फिल्म (केवल महाराष्ट्र सर्किट में रिलीज करने के लिए)

(संख्या फाईल 24/1/68—एफ० पो०—परिशिष्ट 1300)

डा० राम अग्रवाल, अवर सचिव,

MINISTRY OF WORKS, HOUSING AND SUPPLY

(Department of Supply)

New Delhi, the 4th November 1968

S.O. 4027.—In pursuance of the provisions of clause (a) of Sub-Rule (2) of rule 5 of the Central Civil Services (Temporary Services), Rules, 1965, the Central Government hereby specifies the Director General of Supplies and Disposals as the authority to exercise the powers conferred by the said rule in respect of orders passed under Sub-rule (1) of Rule 5 against the employees working in the Regional Supplies and Disposals and Inspection offices under the Directorate General of Supplies and Disposals, other than those whose appointing authority is the President.

2. This notification shall come into force from 1st September, 1968.

[No. 20/9/68-ESII.]

V. P. GULATI, Dy. Secy.

(Department of Works and Housing)

New Delhi, the 11th November, 1968

S.O. 4028.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1958 (32 of 1958), the Central Government hereby appoints the officers mentioned in column (1) of the Table below, being gazetted officers of Government, to be estate officers for the purposes of the said Act and the said officers shall exercise all the powers conferred and perform the duties imposed, on estate officers by or under the said Act, within the local limits of their respective jurisdiction

in respect of the public premises specified in the corresponding entry in column (2) of the said Table.

TABLE

(1)	(2)
Designation of Officer.	Categories of Public premises and local limits of jurisdiction.
<ol style="list-style-type: none"> 1. The Executive Engineer, Central Store Division, No. I, CPWD, New Delhi. 2. The Executive Engineer, Central Store Division, No. II, CPWD, New Delhi. 3. The Executive Engineer, Construction Division, No. II, CPWD, New Delhi. 4. The Executive Engineer, Construction Division, No. III, CPWD, New Delhi. 5. The Executive Engineer, Construction Division, No. IV, CPWD, New Delhi. 	<p>Premises under the administrative control of the Central P.W.D. situated within the local limits of their respective jurisdiction in New Delhi and Delhi.</p>

[No. 21011(4)/66-Pol.]

T. K. BALASUBRAMANIAN,

Dy. Director of Estates & *ex-Officio* Under Secy.

MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 29th August 1968

S.O. 4029.—In pursuance of paragraph 4 of the Employees' Provident Funds Scheme, 1952, the Central Government hereby appoints the Secretary to the Government of Orissa, Labour, Employment and Housing Department, as the Chairman and the Labour Commissioner, Government of Orissa, Deputy Secretary to the Government of Orissa, Finance Department, and Sarvashri F. C. Dhariwal, S. K. Dutta and R. K. Samantrai as members of the Regional Committee for the State of Orissa and makes the following further amendments in the notification of the Government of India in the late Department of Social Security No. S.O. 1295 dated the 9th April, 1965, namely :—

In the said notification—(1) against serial numbers 1 to 5 for the existing entries in the first column, the following entries shall respectively be substituted, namely :—

"The Secretary to the Government of Orissa, Labour, Employment and Housing Department, Bhubaneswar.

The Labour Commissioner, Government of Orissa, Bhubaneswar.

The Deputy Secretary to the Government of Orissa, Finance Department, Bhubaneswar.

Shri F. C. Dhariwal, Vice-President and General Manager, Orient Paper Mills, Brajarajnagar.

Shri S. K. Dutta, General Manager, Orissa Textile Mills, Choudwar, Cuttack."

(2) Against serial No. 8 for the entry in the first column the following entry shall be substituted, namely :—

"Shri R. K. Samantrai, M.L.A., President, Rourkela Mazdoor Sabha, Rourkela."

[No. 12(5)65-PF-II.]

New Delhi, the 31st October 1968

S.O. 4030.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of Messrs Instrumentation Limited, Kota, in an implemented area, hereby exempts the said factory from payment of the employers' special contribution leviable under Chapter VA of the said Act for a period of one year upto and inclusive of the 26th August, 1969.

[No. F. 6/61/68-HI.]

New Delhi, the 1st November 1968

S.O. 4031.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Chinnapul Cardamom Estate, Block 25, 47, Trivandram Road, Palayamcottah, Tirunelveli 2 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment with effect from the 31st October, 1968.

[No. 8/111/68/PF-II.]

S.O. 4032.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Jhunjhunwala Company, 353 Kalbadevi Road, Bombay-2 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirtieth day of April, 1966.

[No. 8/30/66-PF.II.]

S.O. 4033.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. Asha Engineering Works, No. 1 Chinnaswamy Mudahar Road, Tasker Town, Bangalore 1 have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirtieth day of April, 1968.

[No. 8/105/68-PF.II.]

New Delhi, the 4th November 1968

S.O. 4034.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government, having regard to the location of the Kerala University Press, Trivandrum in an implemented area hereby exempts the said press from the payment of the employer's special contribution leviable under Chapter VA of the said Act for a further period upto and inclusive of the 8th July, 1969.

[No. F. 6(42)/68-HI.]

New Delhi, the 6th November 1968

S.O. 4035.—Whereas the State Government of Bihar has in pursuance of clause (d) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), nominated Shri K. A. Ramasubramaniam, Secretary to the Government of Bihar, Department of Labour and Employment to represent that State on the Employees' State Insurance Corporation in place of Shri R. C. Sinha;

Now, therefore, in pursuance of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2551 dated the 9th August, 1966, namely:—

In the said notification, under the heading "(Nominated by the State Governments under clause (d) of section 4)", for the entry against item 10, the following entry shall be substituted, namely:—

"Shri K. A. Ramasubramaniam,
Secretary to the Government of Bihar,
Department of Labour and Employment,
Patna."

[No. F. 3/18/66-HI.]

S.O. 4036.—Whereas the State Government of Madhya Pradesh has in pursuance of clause (d) of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), nominated Shri M. M. Khar, I.A.S., Labour Commissioner, Madhya Pradesh to represent that State on the Employees' State Insurance Corporation in place of Shri S. B. Lal.

Now, therefore, in pursuance of section 4 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 2551 dated the 9th August, 1966, namely:—

In the said notification, under the heading "[Nominated by the State Government under clause (d) of section 4]", for the entry against item 13, the following entry shall be substituted, namely:—

"Shri M. M. Khar, I.A.S.,
Labour Commissioner,
Madhya Pradesh, Indore".

[No. F. 3/18/66-HI.]

S.O. 4037.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the Building Department (South) and Building Department (North), Bombay owned by the Bombay Electric Supply and Transport Undertaking, Bombay in an implemented area, hereby exempts the said Departments from payment of the employer's special contribution leviable under Chapter VA of the said act for a period of one year upto and inclusive of the 10th September, 1969.

[No. 6(88)/66-HI.]

S.O. 4038.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government having regard to the location of the Biological Products Section, Post Office Veterinary College, H'ssar, in an implemented area, hereby exempts the said Section, from the payment of the employer's special contribution leviable under Chapter VA of the said Act for a further period of one year upto and inclusive of the 29th September, 1969.

[No. F. 6(85)/68-HI.]

New Delhi, the 7th November 1968

S.O. 4039.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment known as Messrs. *New Trade Link Corporation, 405 Commerce House, 140 Nagindas Master Road, Bombay-1*, have agreed that the provisions of the Employees' Provident Funds Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies, the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the 30th day of April, 1968.

[No. 8/85/68/PF-II.]

New Delhi, the 8th November 1968

S.O. 4040.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), and having regard to the location of the factories

namely, the Yeravda Prison Press and Government Photozinc Press, Poona, in an implemented area, the Central Government hereby exempts the said factories from the payment of the employer's special contribution leviable under Chapter VA of the said Act for a further period of six months upto and inclusive of the 30th March, 1969.

[No. F. 6/62/67-HI.]

S.O. 4041.—In exercise of the powers conferred by section 88 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the Central Government employee Shri K. D. Sharma on deputation with M/s. Hindustan Housing Factory, Ltd., New Delhi from the operation of the said Act from the 26th November, 1964 to the 6th April, 1966.

2. The above exemption is subject to the following conditions namely:—

- (i) the aforesaid factory shall maintain a register showing the name and designation of the exempted employee; and
- (ii) that notwithstanding this exemption the employee shall continue to receive such benefits under the said Act to which he might have qualified on the basis of contribution paid before the date of exemption.

[No. F. 6(17)/66-HI-II.]

S.O. 4042.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the Government Central Press, Ahmedabad, in an implemented area, hereby exempts the said Press from payment of the employer's special contribution leviable under Chapter VA of the said Act upto and inclusive of the 15th August, 1969.

[No. F. 6/91/68-HI.]

New Delhi, the 11th November 1968

S.O. 4043.—In exercise of the powers conferred by section 88 of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby exempts the following Central Government employees on deputation with M/s. Hindustan Housing Factory, Ltd., New Delhi from the operation of the said Act with effect from the dates noted against each and upto and inclusive of the 14th January, 1969, namely:—

S. No.	Name and Designation	Date of commencement of present exemption
1.	Shri B. R. Gupta Stenographer	28-1-1968
2.	„ B. S. Chaudhri Overseer	19-10-1967
3.	„ Jigmohan Lal Stenographer	18-9-1967
4.	„ Jeewan Das „	28-5-1967
5.	„ S. S. Jaiswal S.A.S. Asst.	28-1-1968
6.	„ O. P. Bhunia U.D.C.	28-1-1968

2. The above exemption is subject to the following conditions, namely:—

- (i) The aforesaid factory shall maintain a register showing the names and designations of the employees; and
- (ii) that, notwithstanding this exemption the employees shall continue to receive such benefits under the said Act to which they might have qualified on the basis of contributions paid before the dates of exemption.

[No. F. 6/17/66-HI-I.]

S.O. 4044.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952) and in supersession of the notification of the Government of India in the late Ministry of Labour and Employment No. S.O. 357 dated 2nd February 1961, the Central Government hereby appoints Shri T. Gomer, Assistant Provident Fund Commissioner (Grade I), Madhya Pradesh, to be an Inspector for the whole of the State of Madhya Pradesh for the purposes of the said Act and of any scheme framed thereunder, in relation to any establishment belonging to, or under the control of the Central Government, or in relation to any establishment connected with a railway company, a major port, a mine or an oil-field or a controlled industry.

[No. 18(20)/68-PF.I.]

S.O. 4045.—In exercise of the powers conferred by sub-section (2) of section 5D of the Employees' Provident Funds Act, 1952 (19 of 1952), and in supersession of the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation, Department of Labour and Employment No. S.O. 4408 dated the 2nd December, 1967, the Central Government hereby appoints Shri K. S. Sethi, as Regional Provident Fund Commissioner for the whole of the State of Maharashtra and the Union territory of Goa, Daman and Diu to assist the Central Provident Fund Commissioner in the discharge of his duties.

[No. 17(80)/65-PF.I(i).]

S.O. 4046.—In exercise of the powers conferred by sub-section (1) of section 13 of the Employees' Provident Funds Act, 1952 (19 of 1952), and in supersession of the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation, Department of Labour and Employment No. S.O. 4409 dated the 2nd December, 1967, the Central Government hereby appoints Shri K. S. Sethi to be an Inspector for the whole of the State of Maharashtra and the Union territory of Goa, Daman and Diu for the purposes of the said Act and of any Scheme framed thereunder, in relation to establishments belonging to, or under the control of, the Central Government, or in relation to establishments connected with a railway company, a major port, a mine or an oil-field or a controlled industry.

[No. 17(80)/65-PFI(ii).]

CORRIGENDUM

New Delhi, the 6th November 1968

S.O. 4047.—In the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), No. S.O. 2494 dated the 8th July, 1968, published in the Gazette of India Part II Section 3, sub-section (ii), at page 3322, in line 10, for "Shri J. C. Dhingra" read "Shri J. R. Dhingra".

[No. 12/7/62-PF.II.]

DALIT SINGH, Under Secy.

(Department of Labour and Employment)

New Delhi, the 1st November 1968

S.O. 4048.—In exercise of the powers conferred by section 8 of the Minimum Wages Act, 1948 (11 of 1948), read with rule 3 of the Minimum Wages (Central Advisory Board) Rules, 1949, the Central Government hereby makes the following further amendments to the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 4523 dated the 2nd December, 1967, namely:—

In the said notification, under the heading "Independent persons",—

(i) for items 2 to 8, the following items shall be submitted, namely:—

Members

"2. Shri M. C. Verma, Secretary to the Government of Manipur, Labour Department, Imphal.

3. Shri B. V. Laud, Deputy Secretary to the Government of Maharashtra, Industries and Labour Department, Bombay-32.

4. Shri C. J. Reddy, Chief Inspector of Establishments, Government of Andhra Pradesh, Hyderabad.
5. Shri P. K. Mattoo, Labour Commissioner and Secretary to the Government of Himachal Pradesh, Industries (Labour) Department, Simla.
6. Shri Dashrath Singh, Labour Commissioner, Uttar Pradesh, Kanpur.
7. Shri E. Balanandan, M.L.A. (Vadakkera) P.O. Kalamassery, Ernakulam District, Kerala.
8. Shri R. K. Baweja, Presiding Officer, Central Government Industrial Court, Tis Hazari Court, Delhi.

(ii) for item 11, the following item shall be substituted, namely:—

Member

- "11. Shri T. K. Mutsuddi, Judge, Fifth Industrial Tribunal and Chairman (Ex-officio) Minimum Wages Advisory Board, New Secretariat Buildings, 1, K. S. Roy Road, Calcutta."

[No. 6(26)/68-LWI(I).]

C. R. NAIR, Under Secy.

(Department of Labour and Employment)

New Delhi, the 1st. November 1968

S.O. 4049.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the East Chora Colliery No. 10 Pit, 1 and 2 Incline, Post Office Bahula, District Burdwan and their workmen, which was received by the Central Government on the 25th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA.

REFERENCE No. 6 OF 1968

PARTIES:

Employers in relation to the East Chora Colliery, No. 10 Pit, 1 and 2 Incline,

AND

Their workmen.

PRESENT:

Shri B. N. Banerjee, Presiding Officer.

APPEARANCES:

On behalf of Employers—Shri K. C. Nandkeolyar, Deputy Chief Personnel Officer.

On behalf of Workmen—Shri Bishnu Malkhandy, Vice-President.

STATE: West Bengal.

INDUSTRY: Coal Mines.

AWARD

By Order No. 6/57/67-LRII, dated December 22, 1967, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following dispute between the employers in relation to the East Chora Colliery, No. 10 Pit, 1 and 2 Incline and their workmen, to this tribunal, for adjudication, namely:

"Whether the denial of permanent job to Shri Balkishan *alias* Ram Kishan, Machine Helper, with effect from the 22nd April, 1967, by the management of the East Chora Colliery (No. 10 Pit and 1 and 2 Incline) was justified? If not, to what relief is the workman entitled?"

2. The case of the workman was espoused by a trade union, known as the Colliery Mazdoor Sabha, which filed a written statement. The employer company did not file any written statement. At the hearing of this reference, the Mazdoor Sabha was represented by its Vice-President, Shri B. Malkhandy. The employer company was represented by its Deputy Chief Personnel Officer, Mr. K. C. Nandkeolyar.

3. The case pleaded, on behalf of the workman concerned by the Colliery Mazdoor Sabha, is hereinafter related in brief. In paragraph 1 of the written statement, it is pleaded that Balkishan alias Ram Kishan (the workman concerned) was working as a Machine Helper in the colliery of the employer company since the year 1962. In paragraph 2 of the written statement, it is further pleaded that the workman was appointed in a permanent vacancy and was in continuous service from 1962 to April 22, 1967. In paragraphs 3 and 4 of the written statement, it is alleged that, on April 22, 1967, the management arbitrarily stopped the workman from working on the pretext that he was a "badli" worker and that no work was available for him. Nevertheless, the employer company appointed another person to work in place of the concerned workman. It is also alleged, in paragraphs 5 and 6 of the written statement, that the management victimised the workman because they got annoyed with him on account of his trade union activities in the colliery, as an active member of the Colliery Mazdoor Sabha. The claim made in the written statement was for reinstatement of the workman on permanent basis and payment of back wages since stoppage of work.

4. Mr. Malkhandy submitted that the workman concerned was a permanent employee and he could not be stopped from working.

5. The workman concerned himself gave evidence in this case. In his evidence he did not support the case pleaded in the written statement that he was appointed from the year 1962. In the very first sentence of his examination-in-chief he stated that he was appointed in the colliery in the year 1964. Later on, he again repeated that he worked in the colliery from 1964 to 1967. In proof of the nature of his appointment under the employer company he produced an appointment letter which was marked Ext. A. That appointment letter is headed "Badli Appointment" and states:

"You are hereby appointed as a badli worker in place of Balkishan with effect from 9th September, 1965 to 30th September, 1965***"

In his evidence he says:

"After September 3, 1965, sometimes I got badli appointment letter, sometimes I did not. I have produced all the papers that I got."

Later on he said, "The appointment letter that I have filed is not the first appointment letter". He did not, however, produce the other appointment letters and did not give any reason for such non-production. In further proof of the case that he was in continuous employment from 1964 to 1967, the workman concerned relied upon the Certificate (Ext. 5) said to have been granted by the Manager of the employer company to the following effect:

"This is to certify that Shri Balkishan Yadav has been working in the colliery as U/G Machine helper off and on since 1964 to 1967. During his working period I found him most obedient, sincere and careful worker. He is also a very hard worker and bears a good moral character.

This certificate is given to him on the eve of my transfer to another colliery.

I wish him success in his life."

Mr. Nandkeolyar did not admit that this was a genuine certificate granted by the manager, his reason being that the certificate was not written out in the printed pad of the company nor by the hand of the manager. Be that as it may, the certificate itself goes to show that the workman concerned was not in continuous employment from 1964 to 1967. The language used in the certificate is, "has been working in this colliery as a U/G Machine helper off and on since 1964 to 1967", that is to say at intervals. Also in support of the case of the continuous appointment, the workman relied on a Bonus Card (Ext. 3) and a Ration Card (Ext. 4). According to his own evidence the bonus card related possibly to the year 1965 and the ration card related to the year 1964. Mr. Nandkeolyar did not admit the genuineness of the bonus card because it did not bear the signature of any colliery official. Mr. Nandkeolyar also contended that in the issue of ration card the employer company had little concern, because they were issued by the Block Development Officer and the ration shop served all residents of Chora colliery and not necessarily the employees of the colliery. These documents, in my opinion, do not prove that the workman concerned was in continuous employment from 1964 to 1967.

6. Regard being had to the discrepancy between the written statement and the evidence and further regard being had to the language used in Ext. 5, the certificate said to have been granted by the manager, which described the workman concerned as an off and on employee and also regard being had to the language of the appointment letter, Ext. 1, I am inclined to hold that the workman concerned was not a permanent employee but merely a "badli" employee and under the terms of his appointment (vide Ext. A), his services could be terminated at any time without notice. I make it clear that the workman did not

appear to me to be a truthful witness. His own documents go against his case. I am reluctant to place any reliance on his evidence.

7. Now, if the workman concerned was merely a "badli" worker, he had no right to a permanent job and if his services were terminated with effect from April 22, 1967, he cannot insist upon reinstatement.

8. In the view that I take, I hold that the denial of permanent job to the workman concerned with effect from April 22, 1967, by the management, was justified and the workman is not entitled to any relief whatsoever.

I make my award accordingly.

(Sd.) B. N. BANERJEE,

Presiding Officer.

Dated,
October 18, 1968.

[No. 6/57/67-LRII.]

S.O. 4050.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the South Bulliarae Kenduadih Colliery of Messrs East Indian Coal Company Limited, Post Office Jealgora, District Dhanbad and their workmen, which was received by the Central Government on the 25th October, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO. 1, DHANBAD

In the matter of a reference under section 10(1) (d) of the Industrial Disputes Act, 1947.

REFERENCE No. 73 OF 1967

PARTIES:

Employers in relation to the South Bulliarae Kenduadih Colliery of M/s. East Indian Coal Company Ltd., P.O. Jealgora, Dist. Dhanbad.

Vs.

Their Workman.

PRESENT:

Shri Kamla Sahai, Presiding Officer.

APPEARANCES:

For the Employers.—Shri D. Narsingh, Advocate.

For the Workman.—Shri Ram Mitra, Secretary, Bihar Koyla Mazdoor Sabha.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, dated the 17th October, 1968

AWARD

Under its order No. 2/132/67-LRII dated the 25th November, 1967, the Central Government, in the Ministry of Labour, Employment and Rehabilitation. (Deptt. of Labour and Employment). New Delhi, has made this reference to this Tribunal for adjudication. The schedule, giving a description of the dispute, is as follows:—

SCHEDULE

"Whether the action of the management of South Bulliarae/Kenduadih Colliery, Post Office Kusunda, District Dhanbad of Messrs East Indian Coal Company Limited, Post Office Jealgora, District Dhanbad in dismissing Shri Osman Mian, Mason Mazdoor from service with effect from the 5th May, 1967, was justified? If not, to what relief is the workman entitled?"

2. The facts of the case as alleged by the company may be shortly stated. The East Indian Coal Company Ltd., has what is called the Khoirah Group of collieries consisting of Khoirah as well as South Bulliarae and Kenduadih Collieries. Shri Harendra Prasad Gupta (M.W. 2) was employed as a colliery Manager in the East Indian Coal Co. Ltd., but he was sometime employed in South Bulliarae and sometimes in Kenduadih Colliery. On the

10th February, 1967, he was employed as the Manager of Kenduadih Colliery. At about 9.00 A.M. on that date, he was at the top of pit Khoirah where he was distributing work to the workmen. He was also issuing instructions. As that point of time, Sri Osman, the concerned workman, who was working as a mason mazdoor in South Bulliarce Colliery, came up to him and asked him to issue a coal slip in his (Osman) favour so that he could get coal for his domestic use. Sri Gupta says that he did not know Osman and that he, therefore, told him that he was busy, that he did not know him and that he (Osman) should meet him in his office. Osman insisted upon getting coal but Sri Gupta told him that he could not get coal at that time because he (Sri Gupta) was busy. Osman kept arguing but Sri Gupta did not pay attention to him. He then received a message that the Agent was on the phone and he wanted to speak to him. Hearing this, he started leaving for the Attendance Room where the telephone was kept. Osman stood in front of him and said that he could not let him go until the coal slip was issued. Sri Gupta put him aside and started going towards the phone. Osman then caught hold of his shirt with a view to stop him from going. As it was morning time, many workers were present there. They caught hold of Osman and pulled him away, telling him all sorts of things.

3. Sri Gupta conveyed information about the above incident to the Manager of Kenduadih Colliery, who drew up chargesheet (Ext. M) on the 11th February, 1967. It was stated in the chargesheet that, at about 9.00 A.M. on the 10th February, 1967, Osman left his place of work, went to 5 pit Khoirah, met the colliery manager of Khoirah there, demanded coal for domestic use from him and created a scene by behaving in a most ugly and unmannerly way in the presence of others and thus committed misconduct under sub-rules 5 and 18 of Rule 27 of the certified standing orders.

4. Sri Osman replied to the chargesheet on the 14th February, 1967. He admitted that he went to 5 pit Khoirah but said that he did so in the course of his duty in order to take sand. He further said that, finding Sri Gupta there, he asked him for a coal slip stating that the "coal slip issued earlier was not allowed for some reason and other". He further said that his representation to Sri Gupta was not heeded. He was squarely abused instead. He closed his explanation by stating that, seeing the bad mood of Sri Gupta, he left the place quietly without behaving in any bad manner.

5. Not being satisfied with the explanation of Sri Osman, the management ordered Sri A. K. Mallik (who is no longer in the service of the company) to hold a domestic enquiry. After due notice to the concerned workman, Sri Mallik held the enquiry on 21st February 1967. At that enquiry, the enquiring officer recorded the statements of witnesses. The statement of Sri Gupta is Ext. M2, that of Sri Barho Singh, Mining Sirdar, is Ext. M3, that of Sri Rambilas is Ext. M3 (a) and that of Sri Gaza is Ext. M4. There are notes under all these statements to the effect that the statements were read over and explained in Hindi to Sri Osman who refused to sign the statements. It is also noted under some of these statements that Osman declined to cross examine the witnesses. Ext. M5 is the statement of Osman himself and Ext. M5 (a) is his signature at the foot of the statement along with the 21st February as the date. I may mention at this very stage that Osman has stated in his evidence before me that neither the Manager nor any other witness was examined in his presence. He has gone to the length of saying that he himself was not asked to make his statement nor did he put his signature under any such statement. On being cross-examined, however, he has admitted that Ext. M5 (a) is his signature. He has then been re-examined by Sri Ram Mitra, the Secretary, Bihar Koyla Mazdoor Sabha, who has appeared on his behalf. On being thus cross-examined, he has said that the statement (Ext. M5) was not read over or explained to him before he put his signature (Ext. M5(a)) under it. He has added that he was told that, if he put his signature, he would be taken back into service from the next day. It is manifest that the whole of the statement made by him on re-examination is an after-thought and entirely false. If his evidence is read as a whole, the only conclusion that can be reached is that his first attempt was falsely to deny that he made any statement and, when admission that Ext. M5 (a) was his signature slipped out of his tongue, he attempted to make out a case that the statement was not read out to him and that he put the signature on account of allurements that he would be taken back into service. Had his signature been taken under his own statement by this allurements, there is no reason why his signatures were not taken under the statements of the witnesses by the same means. I find it impossible to accept these statements made by him as correct.

6. I may now make brief references to the written statements submitted by the union and the company. The union has stated that Osman was the Asstt. Secretary of the South Bulliarce Colliery Branch of the Bihar Koyla Mazdoor Sabha and that his activities were greatly disliked by the management. The workers agitated in support of their demand for publication of the Wage Board recommendations for the coal mining industry and, for this reason, the management began to coerce and victimise Osman who was an

office bearer. It has also been alleged that coal was supplied previously to workers without any restriction but subsequently the system was started for issuance of coal slips on the basis of which coal began to be supplied and that the management stopped supply of coal altogether to Osman.

7. The management has totally denied in its written statement the allegations made by the union referred to above. It has stated that there was no case of industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act and hence this reference itself is incompetent. It has further supported its case relating to the incident in question.

8. It seems to me to be unnecessary to decide the question whether the reference is or is not competent because, on a careful consideration of the entire evidence adduced in this case, I have come to the conclusion that the facts alleged by the management are true and that the management is entitled to succeed on merits.

9. As I have already mentioned, Osman did not make out any case in his reply dated the 14th February, 1967 that he was an office bearer of Bihar Koyla Mazdoor Sabha nor did he make any reference in that statement to victimisation due to his trade union activities. The union raised the dispute before the Asstt. Labour Commissioner (C), Dhanbad by its letter dated the 24th May, 1967 in connection with termination of the services of Osman. That letter is annexure 'A' to the written statement of the company. No allegation of victimisation or of Osman being an office bearer of the Sabha has been made in this letter. The only statement which has been made is, "the action taken by the management is totally unjust, unfair and with a malafide intention". This bare statement does not make out a case of victimisation in fact or a case of trade union activities of Osman as an office bearer of the Sabha. All these allegations are, therefore, afterthoughts and must be rejected. Osman has some statement on these lines in his evidence before me but there is no evidence, oral or documentary, to support his evidence. He is a highly interested witness and I am not prepared to accept his unsupported testimony.

10. I have gone through the statements recorded by Sri A. K. Mallik, the enquiry officer. Sri H. P. Gupta has fully supported his case in the statement (Ext. M2) which he made before Sri Mallik. S/Sri Barho Singh, Rambilas and Gaza have fully supported his evidence in their statements (Ext. M3, M3 (a) and M4). Though Osman has made various addition in his statement (Ext. M5), he had admitted therein that he caught hold of Sri Gupta's shirt but other workers took him away. He has attributed this act to the fact that Sri Gupta was abusing him but that is not supported by any other evidence. He has also admitted that, though he does not recollect the presence of others, Gaza was present at the place of occurrence. In view of the notes made at the end of the statements of witnesses and in view of the fact that Osman's statement was also recorded by the enquiring officer, I have no doubt at all that the entire evidence adduced on behalf of the company was recorded in his presence. I have also no doubt that he was given full opportunities to cross examine the company's witnesses and to adduce his defence. I am satisfied, therefore, that the enquiring officer did not commit any breach of the rules of natural justice. In view of these facts, he has rightly recorded the findings in his report (Ext. M6) that Osman left the place of his duty without leave and further that he behaved in an unruly and unmannerly way. These acts amount to breach of sub-rules 5 and 18 of rule 27 of the standing orders.

11. Before me, the management examined Sri J. P. Shrivastava (M.W.1). He has formally proved all the enquiry papers filed by the company. Sri H. P. Gupta (M.W. 2) has supported the facts as alleged by him. All that has been argued by Sri Ram Mitra against him is that he has not produced the letter which he claims to have written to the manager of South Bulliaree Colliery. In my opinion, this is not at all important. The charge was framed by the Manager of that colliery and he has mentioned in it all the salient facts alleged by Sri Gupta. It cannot, therefore, be said that his letter, if produced, would have shown some other faults.

12. In the circumstances mentioned above, I hold that the domestic enquiry was held properly and legally and no reasons has been made out to interfere with it. The company has also proved its allegations through Sri H. P. Gupta before me. He is no longer in the service of the East Indian Coal Co. Ltd., and there is no reason why he should have deposed falsely before the Tribunal.

13. In conclusion, I hold that the company has proved its case and that the management of South Bulliaree/Kenduadih Colliery was justified in dismissing Sri Osman Mian, Mason Mazdoor, from service with effect from the 5th May, 1967. The second question does not, therefore, arise for consideration.

14 This is my award. It may now be submitted to the Central Government under section 15 of the Act.

(Sd.) KAMLA SAHAI,
Presiding Officer.
[No. 2/132/67-LRII.]

New Delhi, the 4th November 1968

S.O. 4051.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publish the following award of the Central Government Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the Jealgora Colliery of Messrs East Indian Coal Company Limited, Post Office Jealgora, District Dhanbad and their workmen, which was received by the Central Government on the 29th October, 1968.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
DHANBAD.**

Shri Nandagiri Venkata Rao.—Presiding Officer.

REFERENCE No. 142 OF 1967

In the matter of an industrial disputes under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES:

Employers in relation to the Jealgora Colliery of Messrs East Indian Coal Company Limited, Post Office Jealgora, District Dhanbad.

AND

Their workmen

APPEARANCES:

For the employers.—Shri S. S. Mukherjee, Advocate.

For the workmen.—Shri Ram Janam Singh, Secretary, Colliery Mazdoor Sangh (Bararee Colliery Branch).

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, 17th October 1968

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Jealgora Colliery of Messrs East Indian Coal Company Limited, Post office Jealgora, District Dhanbad and their workmen, by its order No. 2/53/66-LRII dated 7th May, 1966, referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

"Whether the management of the Jealgora Colliery of Messrs East Indian Coal Company Limited was justified in stopping Shri Charitar, Trammer No. 7 Pit, from work with effect from the 13th November, 1965? If not, to what relief is the workman entitled?"

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 86 of 1966 on its file. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding was transferred to this Tribunal, by the Central Government by its order No. 8/25/67-LRII dated 8th May, 1967. Consequently the reference is renumbered on the file of this Tribunal as reference No. 142 of 1967. Employers as well as the workmen filed their statements of demands.

3. Parties filed a compromise memo stating that the dispute involved in the reference has been settled to the complete satisfaction of the parties. The compromise memo is duly verified. Having gone through the terms of compromise, I consider them as fair and reasonable and beneficial to the affected workman. The compromise is, therefore, accepted and the award is made in terms of the compromise. The compromise memo is annexed herewith and is made part of the award. The award is submitted under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) N. VENKATA RAO,

Presiding Officer.

Central Government Industrial Tribunal (No. 2),
Dhanbad

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD

In the matter of

REFERENCE No. 142 OF 1967

PARTIES:

Employers in relation to Jealgora Colliery of M/s. East Indian Coal Co., Ltd.

AND

Their workmen

The humble Petition on behalf of the Parties above-named.

Most Respectfully Sheweth:—

(1) That without prejudice to the respective contentions of the parties contained in their Written Statement, the above Reference has been amicably settled on the following terms:—

- (a) That Shri Charitar, Trammer, workman concerned in the present Reference is no longer interested to continue in service and his claim for reinstatement is not pressed.
- (b) That Shri Charitar's services will be deemed to have been terminated with effect from 13th November, 1965.
- (c) That Shri Charitar will be paid a sum of Rs. 1,200 (Rupees one thousand two hundred only) as an *Ex-gratia* Payment in full and final settlement of all his claims and demands till this date of settlement.
- (d) That the Union (Colliery Mazdoor Sangh, Bararee-Jealgora Branch) will be paid a sum of Rs. 100 (Rupees One hundred only) as cost of this proceeding.
- (e) That the payments mentioned in sub-paragraphs (c) and (d) above will be made by the management within one week from the date of this settlement.

It is, therefore, humbly prayed that this Compromise may kindly be recorded and an Award passed in terms thereof.

Dated 31st August 1968

For the Workmen

- (1) (Sd.) RAM JANAM SINGH
Secretary, Colliery
Mazdoor Sangh, (Bararee-
Jealgora Branch).
- (2) (Sd.) CHARITAR
Concerned workman.

For the Employer

- (1) (Sd.) K. R. DHADWAL,
Actg. Chief Mining Engineer,
East Indian Coal Co. Ltd.
P. O. Jealgora (Dhanbad).
- (2) (Sd.) N. P. SAH,
Labour Adviser,
East Indian Coal Co. Ltd.
- (3) (Sd.) S. S. MUKHERJEE,
Advocate,
Dhanbad.

[No. 2/53/66-LRIL]

S.O. 4052.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the Bhulanbararee Colliery, Post Office Patherdih, District Dhanbad and their workmen, which was received by the Central Government on the 29th October, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2)
AT DHANBAD.**PRESENT:**

Shri Nandagiri Venkata Rao.—Presiding Officer.

REFERENCE No. 131 OF 1967

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES:

Employers in relation to the Bhulanbararee Colliery, Post office Patherdih, District Dhanbad.

Their workmen.

AND

APPEARANCES:

For the employers.—Shri S. S. Mukherjee, Advocate.

For the workmen.—None.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, 19th October, 1968

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Bhulanbararee Colliery, Post office Patherdih, District Dhanbad and their workmen, by its order No. 2/8/66-LRII dated 7th April 1966 referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

"Whether the management of the Bhulanbararee Colliery was justified in suspending Shri Abbas Mia, Mining Sirdar, with effect from the 9th November 1965 and subsequently dismissing him from service with effect from the 9th December 1965? If not, to what relief is the workman entitled?"

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 69 of 1966 on its file. Workmen filed their statement of demands. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding was transferred to this Tribunal, by the Central Government by its order No. 8/25/67-LRII dated 8th May 1967. Consequently, the reference is renumbered on the file of this Tribunal as reference No. 131 of 1967. Employers filed their statement of demands.

3. Shri Abbas Mia (hereinafter referred to as the affected workman) was a Mining Sirdar at Bhulanbararee Colliery of the employers. From 2nd October 1965 to 5th October 1965 were paid holidays at the colliery on account of Mahatma Gandhi Birth day and Durga Puja. The affected workman left for his native village and was to report to duty on 6th October 1965. But he did not do so. He sent an application to the management for extension of his leave, without mentioning the period, on account of his illness. He reported at the colliery for duty on 9th November 1965 with fitness certificate. But he was not permitted to join duty. On 15th November 1965 a charge-sheet was issued to him for his unauthorised absence from 6th October 1965 to 8th November 1965. The affected workman submitted his explanation to the charge-sheet on 17th November 1965 and a domestic enquiry was held and, as a result of it dismissed him from service through the letter dated 9th December 1965. These facts are not controverted. The case of the workmen is that the affected workman went to his village during the holidays, that he fell ill, that on 7th October 1965 he sent the letter for extension of his leave on the ground of his illness, that the management did not send any reply to it, that the affected workman believed that the extension of leave asked for was granted, that on 9th November 1965 he returned to the colliery along with a fitness certificate, that the management refused him permission to join duty unjustifiably and issued the charge-sheet with baseless allegation and that the dismissal of the affected workman was not justified and was illegal. The case of the employers is that affected workman being a Mining Sirdar and a member of essential staff of the colliery, he was not expected to leave the colliery even during holidays without prior permission, that the application for extension of leave from the affected workman was for an indefinite, that period and was not accompanied by any medical certificate, that there was no reason for the affected workman to believe that his leave was extended, that on 9th November 1965 when he arrived at the colliery the affected workman was not permitted to resume duty till he had submitted satisfactory explanation for his unauthorised absence, that a domestic enquiry held against him on the charge was in accordance with the principles of natural justice and valid and that as a result of the domestic enquiry the affected workman was rightly dismissed from service. At the early stage the workmen were represented by Shri Prasanta Burman, Secretary, Khan Mazdoor Congress. The employers were represented by Shri S. S. Mukherjee, Advocate. By consent of parties Exts. W1 and M1 to M3 were marked. On 29th July 1968 no one represented the workmen. On 11th September 1968 also no one appeared for the workmen, nor was there any explanation on their behalf for not appearing. Thus, the case proceeded against the workmen in accordance with Rule 22 of the Industrial Disputes (Central) Rules 1957. On behalf of the employers a witness was examined Exts. M4 to M6 were marked.

4. In view of the admitted facts the only point for consideration is whether the domestic enquiry held against the affected workman was correct. MW. 1 was a Group Labour Officer of Bhulanbararee Colliery during the material period. His evidence is that Shri B. N. Jha, Welfare Officer held the domestic enquiry into the charge-sheet. The enquiry proceedings are Ext. M4 and the enquiry report is Ext. M5. The charge-sheet issued to the affected workman is Ext. M1 stating that he was absent without permission from 6th October 1965 to 8th November 1965. The explanation to the charge-sheet submitted by the affected workman is Ext. M2. Ext. M4, the enquiry proceedings show that the Enquiry Officer had recorded statements of Shri A. N. Chatterjee and the affected workman. It is seen that the affected workman was given an opportunity to cross-examine the management's witness. The affected workman did not produce any further evidence. Hence it cannot be said that the enquiry proceedings were vitiated or that the finding of the Enquiry Officer was perverse MW1 has further deposed that the affected workman is working at present as an Overman, a higher post in Kankani colliery and that he had written a letter to him. The letter is Ext. M6. It is addressed to the Chief Mining Engineer of the employers. It says that the affected workman is no more interested in the reference. There is no rebuttal to this evidence. Thus, I find no substance in the case set up by the workmen.

5. I, therefore, find that the management of Bhulanbararee Colliery was justified in suspending Shri Abbas Mia, Mining Sirdar, with effect from the 9th November, 1965 and subsequently dismissing him from service with effect from the 9th December, 1965, and consequently, he is not entitled to any relief. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) N. VENKATA RAO,

Presiding Officer,
Central Government Industrial Tribunal (No. 2),
Dhanbad.

[No. 2/8/66-LRII.]

S.O. 4053.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Samla Dalurband Colliery, Post Office Pandeshwar, District Burdwan and their workmen, which was received by the Central Government on the 29th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE NO. 10 OF 1968

PARTIES :

Employers in relation to the Samla Dalurband Colliery

AND

Their workmen.

PRESENT:

Shri B. N. Banerjee.....Presiding Officer.

APPEARANCES :

On behalf of Employers, Absent

On behalf of Workmen, Shri Benarshi Singh Azad, General Secretary, Khan Shramik Congress

STATE: West Bengal.

INDUSTRY: Coal Mine.

AWARD

By Order No. 6/77/67-I.R.II, dated February 21, 1968, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following dispute between the employers in relation to the Samla Dalurband Colliery and their workmen, to this tribunal, for adjudication, namely:

"Whether the management of Samla Dalurband Colliery Post Office Pandaveshwar (District Burdwan), West Bengal, was justified in refusing employment to Shri Ch. Hari Bouri, Underground Trammer with effect from the 1st August, 1967 and thereafter on grounds of resignation by him? If not, to what relief is the workman entitled to?"

2. The cause of the workman was espoused by a trade union known as Khan Shramik Congress, which filed a written statement. Thereafter, the employer company also filed a written statement. The employer company did not further appear. To-day, which was fixed as the date of hearing with notices to the parties, Mr. B. S. Azad, General Secretary of Khan Shramik Congress, appeared on behalf of the workman, filed a compromise petition and stated that the dispute between the workman concerned and the employer company stood settled on terms contained in the petition of compromise and that no further dispute existed between them. He prayed that the compromise may be recorded and an award passed in terms thereof. Mr. Azad deposed himself and proved the terms of the compromise. He also proved the signatures appearing on the compromise petition. In view of the compromise petition and the prayer, I find that no further dispute exists between the parties now.

3. I, therefore, record the terms of compromise and pass an award in terms thereof. Let the petition of compromise form part of this award.

(Sd.) B. N. BANERJEE, Presiding Officer.

Dated, 14th October 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, 20, BRITISH INDIAN STREET, 3rd FLOOR, CALCUTTA

In the matter of Reference No. 10 of 1968

AND

In the matter of Industrial Dispute

BETWEEN

Employer in relation to the Samla Dalurband Colliery, P. O. Pandaveshwar, Dist. Burdwan.

AND

Their workmen represented by Khan Shramik Congress, P. O. UKHRA, Distt. Burdwan.

Compromise Petition on Behalf of the Above-Named Parties

The above reference has been amicably settled between the parties on the following terms:—

1. That Sri Ch. Hari Bouri has received his full and final payment and is no longer interested in the service with the Management or the present proceeding pending before this Hon'ble Tribunal.
2. That at the request of the Union the Management has agreed to pay a sum of Rs. 250/- as an *ex-gratia* payment in full and final settlement of all claim and demand to Ch. Hari Bouri till the date of this settlement.
3. That there is no dispute existing between the Management and the workman regarding Sri Ch. Hari Bouri which needs adjudication by this Hon'ble Tribunal.

It is, therefore, humbly prayed that the compromise may kindly be accepted and an Award passed in terms thereof.

For Workman,

(Sd.) ILLEGIBLE,

General Secretary, Khan Shramik Congress of Ukhra.

For Samla Dalurband Coal Co. P. Ltd.

(Sd.) ILLEGIBLE,
Director.

For Employer.

[No. 6/77/67-LRII]

S.O. 4054.—In pursuance of the section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Lower Kenda Colliery, Post Office Kajoragram, District Burdwan and their workmen, which was received by the Central Government on the 29th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE No. 96 OF 1967

PARTIES:

Employers in relation to the Lower Kenda Colliery,

AND

Their workmen.

PRESENT:

Shri B. N. Banerjee, Presiding Officer.

APPEARANCES:

On behalf of Employers.—Shri S. S. Mukherjee, Advocate.*On behalf of Workmen.*—Shri Bishnu Malkhandy, Vice-President.

STATE: West Bengal.

INDUSTRY: Coal Mines.

AWARD

By Order No. 6/74/67-LRII, dated December 7, 1967, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following dispute between the employers in relation to the Lower Kenda Colliery and their workmen, to this tribunal, for adjudication, namely:—

"Whether the management of Lower Kenda Colliery Post Office Kajoragram, District Burdwan of Messrs Khas Kenda Colliery (Private) Limited was justified in terminating the services of Shri Pankaj Rajan Moitra, Coal Cutting Machine Supervisor, with effect from the 25th May, 1967? If not, to what relief is the workman entitled "

2. The Colliery Mazdoor Sabha, which espoused the cause of the workman concerned, filed a written statement. The case pleaded in this written statement is hereinafter summarised in brief.

3. It is said that the workman concerned was appointed in a permanent vacancy as a machine Supervisor on or about August 1, 1961. He was given facilities, by the employer company, to attend the L.E.E. classes at Asansol Polytechnic Institution in order to develop his skill and knowledge (*vide* item 4 of the bundle of documents collectively marked Ext. A). On March 23, 1967, the management called upon him to supervise the overhauling and repair of a coal cutting machine lying in the stores (*vide* item 1 of the bundle of documents marked Ext. A). The effect of this order was, it was pleaded, withdrawal of facilities to the workman to attend the Polytechnic classes. It is further stated, in the written statement, that the workman was not given the required materials nor the assistance of machine fitters to do the job of overhauling and he remained idle. In paragraph 5 of the written statement it is stated:

"The purpose of so placing Shri Moitra to the said job was solely to harass and deprive him of the opportunity to attend classes."

It is also pleaded, in the written statement, that, on April 5, 1967, the management issued a chargesheet against the concerned workman for being negligent in duty on the same day. There was an enquiry held into the charge, but, it is alleged, that the charge could not be substantiated. Thereafter on April 16, 1967, it is further alleged, that the management issued a letter to the workman concerned asking him to work under the direct supervision and control of the colliery Engineer, Mr. K. P. Moitra. On April 19, 1967, it is said, the workman concerned received a telegram informing him about serious illness of his mother. Thereupon, he went to the office with an application for leave to go home. He did not, it is said, find the manager in the office. He, therefore, left the application with his direct superior, Mr. Moitra, and went away with permission from him to go home. According to the written statement, he applied for extension of leave for 21 days, by a letter dated April 26, 1967, because of continued illness of his mother. This letter was said to have been sent under certificate of posting. Further, according to the written statement, he himself became ill and applied for further extension of leave by a registered letter on May 15, 1967. At this stage, it is pleaded, the employer company issued a charge-sheet against the workman, dated May 10, 1967, for unauthorised absence, which he received on May 20, 1967. He also received another letter, dated May 19, 1967, from the Management calling upon him to return for duty within 48 hours of receipt of the letter, with the warning that failure to do so will entail loss of lien on service. A combined reply to the chargesheet dated May 10, 1967 and the letter dated May 19, 1967 was said to have been sent by the workman on May 22, 1967.

Notwithstanding the cause shown by the workman, it is stated, the management issued a letter, dated May 25, 1967, terminating his services, with effect from the same date.

4. A two-fold grievance was made against the order of termination of service in the written statement, namely (i) that the charge dated May 10, 1967 was a false charge and was engineered in order to victimise the workman concerned, the reasons for victimisation being that the workman concerned had worked against Mr. J. N. Mukherjee, the owner of the colliery, in the last Parliamentary Election in favour of his opponent, and that the workman concerned was an active member of the Colliery Mazdoor Sabha, a leftist trade union; (ii) that no enquiry had been held into the charge levelled against the workman.

5. There was also a written statement filed on behalf of the employer company. The case pleaded in the written statement was that the workman concerned had been granted only two days' leave for April 20 and 21, 1967, on his application dated April 19, 1967. He did not return after the expiry of the sanctioned leave but continued to remain absent without information. It was further pleaded that for the unauthorised absence from April 22, 1967, a chargesheet, dated May 10, 1967, was sent to the workman calling upon him to explain his conduct. Instead of replying to the chargesheet, it was alleged, the workman wrote a letter, dated May 15, 1967, asking for leave, unlimited until his own uncertain date of recovery. Thereupon, it was said, by a letter, dated May 19, 1967, that the employer company was unable to wait for him indefinitely and unless he reported for duty within 48 hours of the receipt of the letter, he would lose lien on his service. In spite of above letter, the workman did not report for duty. Thereupon, the Manager proposed in writing to the Director of the employer company for termination of the services of the workman for absenteeism and on receipt of his approval terminated the services of the workman by letter dated May 25, 1967.

6. It is in the background of the pleadings, as stated above, I have to decide the dispute referred to this tribunal.

7. The application for leave, which the workman concerned submitted on May 19, 1967, did not ask for any period of leave. The letter (item 1 of the bundle collectively marked Ext. 1) is set out below:

"Most respectfully I want to inform you that just now I have got a telegram from my elder brother. My mother is serious. So I want to go my home as soon as possible.

I will be highly obliged and grateful to you. Kindly give me permission to go home. Telegram is attached herewith."

On this letter there is the endorsement "leave granted for two days only from 20th April, 1967 to 21st April, 1967". The workman says in his evidence that he wrote to the management a letter, on April 26, 1967, under certificate of posting, (which are respectively marked Ext. C and Ext. B) explaining the circumstances under which he came away and asking for 21 days leave with effect from the date of the letter. The management denies receipt of this letter. The workman could not explain why this particularly important letter was sent under certificate of posting, while other letters were sent by registered post. Moreover, the workman says in his evidence, there is a local post office in the area where his home is situated, known as 'Dakhim Dhatka' Post Office. The certificate of posting does not bear the seal of that post office but the seal of some 'temporary post' office somewhere situated. Why this particular letter could not be sent from the local post office but had to be posted at some unknown temporary post office does not appear. It is also strange that the workman concerned made no enquiries as to what happened to his application for 21 days leave and appears to have kept quiet until May 15, 1967, when only he asked for another extension of his leave for an indefinite period until his recovery. It is noteworthy that in this letter also there is no reference to his alleged letter dated April 26, 1967. I do not therefore feel that it would be safe to proceed on the basis of the letter Ext. C. The management may be right in their contention that they never received the letter. Be that as it may, the employer company appears to have been prepared to condone his absence, because by letter dated May 19, 1967 (item 13 of the bundle marked Ext. A), they called upon the workman to report for duty within 48 hours of the receipt of the letter and gave him the warning that if he failed to do so, he would lose lien on his service. The workman did not comply with this requisition or get wiser by the warning but by a letter, dated May 22, 1967, asked for leave upto June 6, 1967. The letter dated May 25, 1967 (item 15 of the bundle marked Ext. A) is letter of termination of service.

8. In his evidence the workman admitted that he had only 10 days' leave due to him. If he was expecting that his earned leave should not be refused to him, he could remain on leave only for 10 days only. Instead thereof, he aspired to be on leave from 20th

April 1967 to 6th June 1967 knowing full well that the employer company was not prepared to grant him leave for so long and had even administered a warning to him. If in these circumstances, the employer company wanted to terminate his service for absenteeism, I am not prepared to hold that the action of the company was unwarranted.

9. I now turn to the argument that the workman concerned should not have been dismissed without enquiry and want an opportunity to him to show cause at the enquiry. I do not make much of this argument. The effect of the two decisions of the Supreme Court in *Burn and Co. v their workmen*, (1957) 1 LLJ 226 and *Indian Iron and Steel Co. v Workmen*, (1958) 1 LLJ 260, is that a formal enquiry in cases of termination of service for absenteeism is not essential unless, of course, the absence itself was caused by the *malafide* action of the employer. In this case, it is not the allegation of the workman that his absence was in any way caused by the employer company. He was absenting of his own accord, in the hope that leave would be granted to him, without ascertaining what risk he was incurring by overstaying leave and by disrespecting the warning of loss of lien on service contained in the letter dated 19th May 1967. He did not care to show a proper cause to the chargesheet dated 10th May 1967. In these circumstances I cannot make much of the criticism that the dismissal without an enquiry vitiated the order of termination of service. In this context, I propose to make one observation. Earned leave should be liberally granted. The difficulties of a workman should be considered and leave should be granted, if he can be helped. But a workman should not be conceded the right to take leave at his pleasure and to remain absent for as long as he likes. In making this observation, I am reminded of an observation made by Das Gupta, J of the Supreme Court in *Indian Oxygen v its workmen*, (1963) 1 LLJ at 266:

"It is hardly necessary to say that, specially at the present time emphasis in the country should be more on increased production and absence from work should not be unduly encouraged."

In the instant case, the workman went to the extent of remaining absent as he liked. I am not prepared to condone such a conduct.

10. I now take up for consideration the point that the workman was victimised, because he had taken part in helping an opponent of the proprietor of the colliery in the last Parliamentary Election and also because he was an active member of a Communist trade union. The entire allegation in this respect is based on the belief of the workman concerned and the Vice-President of the Colliery Mazdoor Sabha. This belief may be a preconceived or a highly coloured type of belief and the evidence on this point does not impress me.

11. It was lastly contended before me that under clause 10(c) of the Standing Orders of the employer company, the workman could only lose lien over his appointment but was entitled to be kept on the badli list. On behalf of the employer company reliance was placed on clause (n) of Rule 18 of the Standing Order and it was argued that continued absence without permission and without satisfactory cause for more than 10 days constituted misconduct and for misconduct it was open to the employer company to impose the proper penalty upon the workman concerned. In my opinion, the conduct of the workman concerned falls under the mischief of clause (n) of Rule 18 of the Standing Order. If there are two alternative provisions of the Standing Order, it is open to the employer to choose any of the provisions and deal with the workman accordingly [*vide* the observations of Wanchoo C.J. in *National Engineering Industries v. Hanuman* (1957) 2 LLJ 883 at p. 887]. In my opinion, the provision of 10(c) and 10(n) are alternative to each other and I do not find any substance in this contention also.

12. In the result, I hold that the termination of services of Pankaj Ranjan Moitra, Coal Cutting Supervisor, with effect from 25th May 1967, was justified and the workman is not entitled to any relief in this reference.

I make my award accordingly.

(Sd.) B. N. BANERJEE,
, Presiding Officer.

Dated, October 15, 1968.

[No. 6/74/76-LRII.]

S.O. 4055.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the matter of an application under section 33A of the said Act, from Miss Madhuri Majumdar, Junior Female Nurse, Sanctoria Hospital of Messrs Bengal Coal Company Limited, Post Office Dishergarh, District Burdwan (West Bengal) which was received by the Central Government on the 25th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

MISC. APPLICATION No. 3 OF 1968

(Under Section 33A of I.D. Act)

PARTIES :

Miss Madhuri Majumdar, Jr. Female Nurse, Sanctoria Hospital of M/s. Bengal Coal Co. Ltd., Burdwan *Applicant.*

Versus

The Management of Bengal Coal Co. Ltd., Dt. Burdwan *Opp. Party.*

PRESENT:

Shri B. N. Banerjee, Presiding Officer.

APPEARANCES:

On behalf of Opp. Party.—Shri B. P. Kabi, Security Officer.

On behalf of Applicant.—Shri J. K. Gupta, Secretary, Sanctoria Hospital Nursing Staff and Employees' Union.

STATE: West Bengal

INDUSTRY: Coal Mines.

AWARD

This is an application under Section 33A of the Industrial Disputes Act, 1947.

2. By Order No. 6/67/68-LR II, dated 14th August 1968, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) referred the following dispute between the employers in relation to the management of Sanctoria Hospital of Messrs Bengal Coal Company Limited, and their workmen, to this tribunal, for adjudication, namely:

"Whether the management of the Sanctoria Hospital owned by Messrs Bengal Coal Company Limited, Post Office Dishergarh, District Burdwan was justified in dismissing Miss Madhuri Mazumdar, female Nurse from service with effect from the 1st of June, 1968. If not, to what relief is she entitled?"

3. Now that the above reference has been made under Sec. 10 of the Industrial Disputes Act, 1947, it was stated on behalf of the applicant that she would not press the application under Section 33A of the Industrial Disputes Act, 1947, on the ground that the dismissal had been made without approval of the tribunal during the pendency of an industrial dispute.

4. Since the application is not pressed, I dismiss the application. This will not, however, in any way, prejudice the hearing of the Reference under Section 10, of which mention has hereinbefore been made.

This may be treated as my award.

(Sd.) B. N. BANERJEE,
Presiding Officer.

Dated October 19, 1968.

[No. 6/67/68-LR II].

S.O. 4056.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the 7 and 8 Pits Jamuria Colliery of Messrs Equitable Coal Company Limited, Post Office Dishergarh, District Burdwan and their workmen, which was received by the Central Government on the 29th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE No. 24 OF 1968

PARTIES:

Employers in relation to the 7 and 8 Pits Jamuria Colliery of M/s. Equitable Coal Company Ltd.

AND

Their workmen.

PRESENT:

Shri B. N. Banerjee,—Presiding Officer.

APPEARANCES:

On behalf of Employers—Sri M. K. Mukherjee, Advocate.

On behalf of Workmen—Shri J. Pandey, Vice-President, Colliery Mazdoor Congress.

STATE: West Bengal.

INDUSTRY: Coal Mines.

AWARD

By Order No. 6/24/68-LR.II, dated April 8, 1968, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following dispute between the employers in relation to the 7 and 8 Pits Jamuria Colliery of Messrs Equitable Coal Company Limited and their workmen, to this tribunal, for adjudication, namely:

"Whether the management of 7 and 8 Pits Jamuria Colliery was justified in dismissing from service Sri Janardan, Stone Dusting and Watering Mazdoor, with effect from the 22nd December, 1967? If not, to what relief is he entitled?"

2. The workman concerned was charged with theft from the underground, of a length of hose pipe used for water spraying purposes. He was found guilty at the enquiry and was dismissed for misconduct. This gave rise to an industrial dispute and the cause of the workman was espoused by a trade union known as Colliery Mazdoor Congress, which filed a written statement.

3. According to the written statement, the workman had put in 14 years of faithful service as a sand dusting and watering mazdoor, in the employer company. In paragraphs 2 and 3 of the written statement, it is stated that on September 9, 1967, the workman had his duty underground in the third shift (beginning from the midnight of September 7, 1967 to 8 A.M. of September 8, 1967). He came out of the mine at 8 A.M. after the end of his shift work. While underground he worked under the supervision of a Mining Sirdar and while he left, he came along with other workmen working underground. What was meant to be said, in paragraph 3 was that the concerned workman had little opportunity to commit any theft underground under the watchful eyes of the Mining Sirdar and his theft could not go unnoticed when he was coming out with his co-workers. In paragraph 4 of the written statement, it was further stated that the charge alleging that the workman had stolen a length of hose pipe, measuring 70' (feet) was untrue. Apart from characterising that the charge was untrue, it was alleged in the written statement, that allegation of the management regarding theft was not fully disclosed in the chargesheet, the domestic enquiry was a mockery and the proceedings were most perfunctory. It was further alleged that the workman was not given opportunity to show cause against "fresh allegations procured by the management and disclosed for the first time at the enquiry stage." It was also alleged that the enquiring officer did not give opportunity to the workman to examine the Mining Sirdar as his witness. It was lastly alleged that the enquiring officer was a "tool in the hands of the colliery manager" and that there were good reasons to believe that the workmen having had become surplus to the management's requirement, the management dismissed him on a false charge in order to avoid retrenchment and payment of retrenchment compensation.

4. In the rejoinder submitted by the employer company, the allegations contained in the written statement filed by the Mazdoor Congress were denied and disputed. It was stated that the workman had been specifically charged with theft. He was allowed to show cause to the charge which he did. There was a proper enquiry with all opportunities to the workman to defend himself. He was found guilty on evidence and was accordingly dismissed. The allegations that fresh materials, not disclosed in the chargesheet, were produced at the enquiry or that the enquiring officer was a biased person or that opportunity to examine witnesses was not given to the workman concerned, were denied.

5. On behalf of the employer company the enquiring officer, A. K. Tarafdar, gave evidence. He proved the chargesheet and the reply thereto by the workman (Ext. 1), the notice of enquiry sent to the workman and the proceedings of the enquiry.

6. On behalf of the union, the workman himself deposed. I shall refer to the oral and documentary evidence, in detail, later on in this award.

7. Mr. J. N. Pandey, who represented the trade union, submitted, in the first place, that the charge against the workman was vague and not understandable and it was impossible for the workman to give a proper reply to such a charge. What he wanted to argue was that because of the vagueness, the chargesheet must be condemned as violating the principles of natural justice. In order to examine this argument, it is necessary for me to refer to the language of the charge itself (Ext. 1):

"You have stolen away about 70' hose pipe from underground used for water spraying purpose. You are charged for theft of company's property.

You are suspended pending enquiry."

The particular faults found by Mr. Pandey in this charge were that the place of the theft was not specifically mentioned nor was the time thereof. It is noteworthy that in the cause shown by the workman, he did not make any point about the vagueness of the charge nor did he complain that the charge was not understandable to him. He said, in the cause shown by him (part of Ext. 1):—

“I had not stolen away 70' hose pipe from underground which was provided for water spraying purpose. I am one of water spraying mazdoor of this company and working under your kind control. It is impossible for me as I am a normal worker of the stolen thing. I was on duty in East side under the Mining sirdar Shri Ramujar on IIIrd relay. But hose pipe was stolen from West side section. How I can go there and steal it. All charges were brought illegally against me. ***”

In paragraph 5 of the written statement filed by the union, it was, however, stated:

“The offence of theft has not been defined in the standing order and in ordinary dictionary it means the act of thieving any article from any given place but the material particulars giving the name of place wherefrom the alleged thieving was committed and the time, etc. were not given in the Charge-Sheet.”

I am not prepared to uphold the first argument of Mr. Pandey. In the chargesheet itself the date of the offence is given as “7th September, 1967 third shift”. This appears from the printed heading of the chargesheet. There is no dispute that the workman was an underground worker, working as a sand dusting and watering mazdoor in No. 7 and 8 Pits of Jamuria Colliery. The hose pipe was stated to have been stolen from underground meaning thereby the underground where the workman worked. This, in my opinion, is sufficient particularisation of the misconduct. At any rate, the workman did not make any complaint about the language of the charge at the time when he showed cause and I cannot make much of the objection introduced, by way of refinement, in the written statement filed by the union.

8. Mr. Pandey next argued that either the enquiry was not at all held or was not held in the presence of the workman concerned. This objection does not appear to have been specifically taken in the written statement filed by the union. All that was stated in paragraph 6 of the written statement was:

“the Management being determined to get rid of the workman on the plea of dismissal arranged a mockery of domestic enquiry and proceeding in a most perfunctory manner dismissed the workman from his service.”

Then again, it appears from the notice (Ext. 2) that the enquiry into the charges was fixed for hearing on October 25, 1967 at the office of the Welfare Officer. It appears further from the proceedings of the enquiry and from the evidence of the enquiring officer, A. K. Tarafdar, that one Harmonia, a Banksman, was examined on that day and the enquiry was thereafter adjourned to October 27, 1967. This appears from Notice, Ext. 5. It is the evidence of Tarafdar that the workman concerned did not accept this notice. Thereupon, the enquiry was further adjourned to November 8, 1967. This appears from Notice, Ext. 7. The first notice of enquiry (Ext. 2), according to the evidence of Tarafdar, was served upon the workman concerned under cover of the company's Peon Book—the entry in the Peon Book, bearing the thumb impression of the workman concerned, is Ext. 3. The notice of the adjourned date of hearing, Ext. 5, according to the evidence of Tarafdar was also sent to the workman concerned under cover of the Peon Book and the particular entry in the Peon Book is marked Ext. 4. It is, however, admitted that the workman did not accept the notice. Since the workman did not turn up on the adjourned date of hearing, there was a third notice (Ext. 7) sent to the workman by registered post fixing the date of hearing to November 8, 1967. This notice is said to have been refused by the workman. The registered cover bearing the postal endorsement of refusal is marked Ext. 6. Although the workman had refused to accept the notice sent by registered post, he turned up on November 8, 1967 and asked for a copy of the notice. The second copy of the notice was given to him and his receipt was taken in the Peon Book—the entry in the Peon Book being marked Ext. 8. According to the evidence of Tarafdar, at the second sitting of the enquiry there were four witnesses examined, namely, Sudam Mondal, Pump Mazdoor, K. B. Chohda, under-Manager, Sri Anil Kumar Singh, Overman and Sri Gopal Chakrabarty, clerk. Tarafdar said in his evidence that workman was present at the enquiry but declined to cross-examine the witnesses and also declined to put his thumb impression on deposition sheets in token of his presence. It is noteworthy, however, that on the first day of the enquiry, he is said to have put his thumb impression on the deposition sheet of Harmonia in token of his presence and also is said to have cross-examined the witness. In further proof of the fact that the workman concerned had refused to put his thumb impression on the deposition sheets, at the second sitting of the enquiry, the enquiring officer took evidence of Amiya Chatterjee, a Provident Fund Clerk and Haradhan Paitundi, a Leave Clerk. Tarafdar

also stated in his evidence that he took the precaution of explaining the statements recorded by him in English to the witnesses and the workman concerned in Hindi.

9. As against all these, there is the evidence of the workman himself. In his examination-in-chief he said:

"I do not remember the date but I went to attend one enquiry but I was sent back by Tarafdar Sahib. He told me that no enquiry would be held on that day. Thereafter, I was never called to attend any enquiry. No statement by myself was recorded at the enquiry. It is untrue that evidence of Harmonia was taken in my presence. The evidence of Sudama was also not taken in my presence. Nor did Anil Kr. Singh depose in my presence. I did not put my thumb impression on the deposition sheet of Harmonia in token of my presence."

In his cross-examination, he further stated:

"It is not true that there were full enquiries held in my presence. No enquiries were ever held in my presence. It is untrue that I cross-examined witness Harmonia or that I put my thumb impression on the deposition sheet in token of my presence."

This workman, however, admits that he received the notice of the first sitting of enquiry sent under cover of entry in the Peon Book. He also admits that he received two letters in respect of enquiry, thereby meaning that he received the notice of the first sitting and also copy of the notice of the second sitting, which was delivered to him under cover of the entry, Lxt. 8, in the Peon Book.

9. In this state of evidence, I am unable to uphold the argument of Mr. Pandey that there was no enquiry held. The workman was served with a chargesheet. This is admitted. He was served with a notice of the first sitting of the enquiry. This is also admitted. The proceedings show that he was present at the first sitting and cross-examined witness Harmonia. It is also in evidence that he received the notice of second sitting of the enquiry of November 8, 1967. I am not prepared to believe that after having received the notice, he avoided the enquiry or that he went to the enquiry and he was turned back by the enquiring officer. He admits in his evidence that he has no enmity with Tarafdar Sahib. If that is so, there is no reason to suppose that Tarafdar would stoop to the meanness of sending him back on false assurance and hold the enquiry in his absence. Of the two witnesses, examined, namely, the workman and Tarafdar, the latter appeared to me to be the more truthful witness and his evidence is also borne out by the records filed before me. The suggestion that these records were subsequently fabricated, does not appeal to me.

10. Now, if the workman had been charged with a misconduct and if there was an enquiry held into the misconduct with opportunity to the workman to come and defend himself and if considering the evidence, the enquiring officer found him guilty, I am not prepared to interfere with the findings of the domestic enquiry, unless it appears that the findings were either perverse or based on no evidence. In my reading the finding about theft is based on the evidence of witnesses examined at the domestic enquiry.

11. It was lastly argued before me by Mr. Pandey that the workman had expressly desired before the enquiring officer to examine the Mining sirdar of his area in the mine during the enquiry, but this opportunity was not given to the workman. This plea was taken in paragraph 8 of the written statement. The workman was confronted by the tribunal with the paragraph of the written statement and he gave the following answer:

"It is not true that I wanted to examine the Mining sirdar of my area in the mine during the relevant shift as my witness, before the enquiring officer. It is also untrue that such a prayer was made but no such opportunity was given to me."

In the face of the evidence by the workman himself, there is little in the plea taken in paragraph 8 of the written statement.

12. In the view expressed by me, I find that the management of 7 & 8 Pits Jamurja Colliery was justified in dismissing from service Shri Janardan, Stone Dusting and Watering Mazdoor, with effect from the 22nd December, 1967. As such, he is not entitled to any relief before this tribunal.

I make an award accordingly.

(Sd.) B. N. BANERJEE,
Presiding Officer.

Dated, October 26, 1968.

[No. 6/24/68/LRII.]

S.O. 4057.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Bon-Jamihary Colliery owned by Messrs Bon-Jamihary Anthracite Coal Company, Post Office Salanpur, District Burdwan and their workmen, which was received by the Central Government on the 29th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA.

REFERENCE No. 4 OF 1968.

PARTIES:

Employers in relation to the Bon-Jamihary Colliery,

AND

Their workmen.

PRESENT:

Shri B. N. Banerjee, Presiding Officer.

APPEARANCES:

On behalf of Employers.—Shri K. N. Dutt, General Manager.

On behalf of Workmen.—Shri Provat Goswami, Org. Secretary, Colliery Mazdoor Union (INTUC).

STATE: West Bengal.

INDUSTRY: Coal Mines.

AWARD

By Order No. 6/85/67-LRII, dated January 6, 1968, the Central Government referred the following dispute between the employers in relation to the Bon-Jamihary Colliery owned by Messrs Bon-Jamihary Anthracite Coal Company and their workmen, to this tribunal, for adjudication:

“Whether the transfer of S/Shri Rambarai Choubey and Bhagwan Singh Chaprasis from Bon-Jamihary Colliery to Brindabanpur Khas Colliery which also belongs to the same management with effect from the 10th October, 1967, was justified? If not, to what relief are the workmen entitled?”

2. At the hearing to-day, the employers were represented by their General Manager, K. N. Dutt and the workmen by Provat Goswami, Organising Secretary, Colliery Mazdoor Union. Both the parties filed a petition of compromise, stating that the dispute stood settled in terms of the compromise petition. They prayed for an award in terms of settlement. In my opinion, the agreement is lawful and fully and completely settles the industrial dispute between the parties.

3. I, therefore, make an award in terms of the petition of settlement. Let the petition containing the terms form part of this award.

Dated October 26, 1968.

(Sd.) B. N. BANERJEE,
Presiding Officer.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

IN THE MATTER OF REFERENCE No. 4 OF 1968

PARTIES:

Employers in relation to Bon-Jamihary Colliery of M/s. Bon-Jamihary Anthracite Coal Co., P.O. Salanpur, Dist. Burdwan.

AND

Their workmen, represented by Colliery Mazdoor Union, 27, G. T. Road, Bastin Bazar, Asansol, Burdwan.

The humble petition of both the parties above-named most respectfully sheweth:

1. That the above case is pending before this hon'ble tribunal for adjudication.

2. That the parties have come to an amicable settlement on the following terms:

- (a) It is admitted by the parties that all the two workmen whose case are before this hon'ble Tribunal by the order of reference have already been reinstated in their former jobs and services in Bon-Jemihar Colliery with continuity of service.
- (b) It is admitted by the management that the order of transfer dated 10th October, 1967, will be treated as withdrawn.
- (c) It is admitted that the workmen concerned has been paid their wages and other emoluments for the period of their non-employment.

3. The parties in the circumstances, pray that the hon'ble tribunal may be graciously pleased to admit this settlement and give its award in terms thereof,

And for this, the parties shall as in duty bound ever pray.

Sd./- PROVAT GOSWAMI.

Org. Secretary,
Colliery Mazdoor Union

(for Workmen).

Dated October 26, 1968.

(Sd.) K. N. DUTTA,
General Manager,
Bon-Jemihary Colliery.
[No. 6/85/67-LRII.]

S.O. 4058.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3), Dhanbad, in the industrial dispute between the employers in relation to the Kenduadih Colliery of Messrs Hurriladih Coal Company Limited, Post Office Bhaga, District Dhanbad and their workmen, which was received by the Central Government on the 28th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 3) AT DHANBAD

REFERENCE No. 21 OF 1968

PRESENT:

Shri Sachidanand Sinha, Presiding Officer.

PARTIES:

Employers in relation to Kenduadih Colliery

Vs.

Their workmen.

APPEARANCES:

For Employers: Shri S. S. Kapoor, Advocate.

For Workmen: Shri P. B. Choudhary, Executive Member of the Colliery Staff Association.

INDUSTRY: Coal.

STATE: Bihar.

Dhanbad, the 15th October 1968

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Kenduadih Colliery, Post Office Bhaga, District Dhanbad and their workmen, by its Order No. 2/81/66-LRII dated the 16th May, 1966 referred to the Central Government Industrial Tribunal, Dhanbad under section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matter specified in the Schedule annexed thereto. The Schedule is extracted below:

SCHEDULE

"Whether the cancellation of the apprenticeship of Shri Biswasjoti Biswas, Survey Apprentice, with effect from the 1st July, 1965 by the management of Kenduadih Colliery of M/s. Hurriladih Coal Co. Ltd., was an act of victimisation? If so, to what relief is the workman entitled?"

The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 91 of 1966 on its file. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding was transferred to the Central Government Industrial Tribunal No. 2, Dhanbad by the Central Government's Order No. 8/25/67-LRII dated the 8th May, 1967 where it was numbered as reference No. 146 of 1967. By its subsequent order No. 8/71/68-LRII dated the 17th August, 1968, the dispute was transferred to this Tribunal and it has been renumbered as reference No. 21 of 1968.

A written statement was filed by the General Secretary, Colliery Staff Association on the 15th June, 1968. The case made out in the written statement is that Shri B. J. Biswas, the concerned workman was appointed as a Survey Apprentice with effect from the 22nd September, 1961 on a consolidated monthly salary of Rs. 60/-. After short period of his appointment he was promoted to the post of Assistant Surveyor and his pay was enhanced to Rs. 85/- per month. The management cancelled his apprenticeship from the 1st of July, 1965. According to the workman on the day cancellation of apprenticeship, Shri B. J. Biswas the concerned workman was not an apprentice but Assistant Surveyor and that termination of his service was on account of victimisation.

There was a serious accident at the Colliery resulting in the loss of six lives. The case of the workmen is that this accident was due to the high-handedness of the manager Shri H. M. A. Malik. The concerned workman Shri B. J. Biswas deposed against the management in that case of fatal accident and it was on this account that the management victimised him by terminating his service.

The management filed written statement on the 10th of June, 1968. Their contention is that Shri B. J. Biswas the concerned workman was appointed as a Survey Apprentice on a consolidated allowance of Rs. 60/- per month with effect from the 22nd September, 1961 and this appointment was purely temporary and terminable on a week's notice and that the concerned workman had agreed to these terms and confirmed the same. According to the management the workman concerned was making no progress and accordingly his apprenticeship was cancelled with effect from the 1st July, 1965 by giving him one week's notice by letter dated the 26th June, 1965 and that the action of the management was *bonafide* and was not result of victimisation.

Four witnesses were examined on behalf of the workmen and only one witness was examined on behalf of the management. Ex. W1 to W16 were marked on behalf of the workmen and Ex. M1 and Ex. M2 were marked on behalf of the management.

The first contention on behalf of the workmen is that on the date of his termination of service Shri B. J. Biswas the concerned workman was not an apprentice but an Assistant Surveyor.

Shri Bhahani Ranjan Sarkar (W.W.2) has stated that at first Shri B. J. Biswas the concerned workman was appointed as Surveyor Apprentice on a consolidated salary of Rs. 60/- and that after a year his salary was raised to Rs. 85/- and his designation was changed to Assistant Surveyor. But in cross-examination he stated that no letter was issued to Shri B. J. Biswas confirming him as Assistant Surveyor by the management. The concerned workman Shri B. J. Biswas has also admitted in his evidence that he did not receive any letter from the management appointing him as Assistant Surveyor qualified or unqualified.

According to the standing order an apprentice is a learner who is paid allowance during the period of his training. Ex. M1 is a letter of appointment of the concerned workman. As per the letter of appointment Shri B. J. Biswas was appointed as a Survey Apprentice on a consolidated salary of Rs. 60/- and it is further mentioned therein that the appointment was purely temporary and was terminable on one week's notice. The terms of appointment were confirmed by the workman concerned. The temporary workman does not acquire the character of a permanent workman only because he gets some increment of pay during the tenure of his service or he is placed on some permanent work like the work of Assistant Surveyor.

It is well settled principle of law that the award must be confined strictly to the terms of reference and must never extend beyond these terms. In the instant case according to the order of reference the point for determination is the cancellation of the apprenticeship of Shri B. J. Biswas Survey Apprentice. The concerned workman Shri B. J. Biswas has been shown therein designated as Survey Apprentice and the matter for adjudication is whether the cancellation of his survey-apprenticeship was an act of victimisation.

This Tribunal is bound to confine its adjudication only to those points which are referred to for adjudication and matters instantly thereto. The designation of the concerned workman has been given as Survey Apprentice in the reference itself and the only question referred to for adjudication is whether the cancellation of survey apprenticeship of Shri B. J. Biswas was an act of victimisation. Therefore according to the terms of reference

the question to treat the concerned workman as Assistant Surveyor, does not arise. In this connection the management has cited before me the ruling reported in 1968 Lab. I.C.82 (Vol. I, C.N. 28).

The main point for consideration, therefore, is whether the cancellation of the apprenticeship of the concerned workman Shri B. J. Biswas with effect from the 1st July, 1965 by the management was an act of victimisation.

The case made out in written statement by the workmen is that the concerned workman deposed against the management in the fatal accident case and that it was on this account that he has been victimised. To support this contention the workmen produced four witnesses. Shri R. B. Choudhary, WW1 stated in his evidence that in connection with the fatal accident case there had been a spot enquiry conducted by the Regional Inspector of Mines on 23rd April, 1965 and that in that case Shri B. J. Biswas along with other two persons appeared as witness against the management. In cross-examination he admitted that the management did not terminate the service of the other two persons.

Bhawani Ranjan Sarkar, Surveyor (WW2) also admitted in the cross-examination that no other employee was discharged or dismissed from service on account of the fact that he had deposed against the management in the said fatal accident case. It was also admitted that a criminal case was filed against the management in connection with the said fatal accident and that Shri B. J. Biswas was not a witness there in the Court of Law.

During evidence it was further alleged that Shri T. K. Das was assaulted on 23rd June, 1965 by Md. Mazid and Mangal Singh the body-guards of the manager. A departmental enquiry was held in that connection and Shri B. J. Biswas the concerned workman deposed in that case too. This plea was however, not taken in the written statement filed by the workmen. It is also to be noted that there was a criminal case in connection with the said assault and that the concerned workman was not cited as a witness in the Court of Law.

Since Shri B. J. Biswas was not cited as a witness in the Court of Law either in the case connected with the said Fatal Accident or that of the assault on Shri T. K. Das, it leads to prove that his evidences before the enquiry conducted by the Regional Inspector of Mines in the Fatal Accident Case and before the Departmental Enquiry in the case of the said assault were of little importance. Moreover, the workmen's witnesses have also admitted that the management did not take any action against any other person who had deposed against the management in the Fatal Accident Case.

Merely saying that the order of termination of service was passed by the management in order to victimise the workman, is not meaningful. The facts and circumstances leading to the act of victimisation must clearly be proved by adducing satisfactory evidence. A finding on victimisation can be made only when there is cogent evidence to justify the same. It cannot be made either casually or light-heartedly. The workmen have hereby failed to prove the charge of victimisation.

I therefore, hold that the cancellation of the apprenticeship of Shri B. J. Biswas, Surveyor-apprentice with effect from the 1st July, 1965, by the management of Kenduadih Colliery was not an act of victimisation and that the workman is not entitled to any relief.

This is my award. It may be submitted to the Central Government under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,
Presiding Officer,

Central Government Industrial Tribunal (No. 3), Dhanbad.

[No. 2/81/66-LRII.]

S.O. 4059.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the management of Damua Colliery of Kanhan Valley Coal Company (Private) Limited, Post Office Damua, District Chhindwara (Madhya Pradesh) and their workmen, which was received by the Central Government on the 26th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR.

Dated October 15, 1968

PRESENT:

Shri G. C. Agarwala, *Presiding Officer.*

CASE REF. NO. CGIT/LC(R)(34) OF 1968

PARTIES:

Employers in relation to Damua Colliery, Dolly Dale, Byramji Town, Nagpur.

Vs.

Their workmen, represented through the General Secretary, Satpur Koyala Khadan Mazdoor Congress, P.O. Junnardeo, Distt. Chhindwara (M.P.).

APPEARANCES:

For employers.—Shri M. M. Giradkar, Agent, Damua Colliery, Dolly Dale, Byramji Town, Nagpur.

For workmen.—Shri Ramnarayan Singh, General Secretary, Satpura Koyala Khadan Mazdoor Congress, P.O. Junnardeo, Distt. Chhindwara (M.P.).

INDUSTRY: Coal Mine

DISTRICT: Chindwara (M.P.)

AWARD

By notification No. 5/22/68-LR II dated 9th May, 1968, the Ministry of Labour and Employment, Government of India referred the following matter of dispute, as stated in the schedule to the order of reference, under section 10(1)(d) I.D. Act to this Tribunal for adjudication.

SCHEDULE

Whether the action of the management of Damua Colliery of Kanhan Valley Coal Company (Private) Limited, Post Office Damua, in laying off the workmen *viz.* Sarvashri Arjun, Kamal, Malikram and Rajaram with effect from the 31st November, 1967 and subsequently retrenching them with effect from the 23rd February, 1968, was justified? If not, to what relief are these workmen entitled?

It may be mentioned at the outset that the date 31st November, 1967 mentioned in the issue under reference is obviously an accidental slip for 30th November as November is not of 31st days. This technical error, however, does not affect the validity of the reference. The actual "lay off" as admitted between the parties commenced from 30th November, 1967.

The four concerned workmen, Sarvashri Arjun, Kamal, Malikram and Rajaram were admittedly piece-rated coal cutters for a number of years. When the new mahager Shri D. L. Khanzode (Ex. W.1) took over in August, 67, as admitted by him, he abolished the category of coal-cutters on economic grounds. He gave alternative time rated jobs under category V to these and other coal-cutters. They continued to work till 15th November, 1967. On this date, these four and eight others applied to the manager that they should be given back the old job of piece-rated coal cutting from 20th November, 1967, failing which the consequences would be bad (Ex. E.3). There was also some incident at the manager's bungalow on this date and in respect of which the manager sent a report to Superintendent of Police (Ex. E.5). The director also addressed a communication to the police dated 23rd November, 1967 (Ex. W.4) intimating apprehension of breach of peace. There was, however, no outward event. It is an admitted fact that on 15th November, 1967 there was break-down of haulage engine in Mine No. 9 for which by notice (Ex. E.1) the workers of this mine were laid off. The haulage was, however, repaired on 17th November, 1967 as mentioned in notice (Ex. E.2). Presumably because of this short lay off for 3 days, these four concerned workmen and 8 others moved the application to the manager so as to be given their old job as piece rated coal-cutters. According to management, these workers continued to work half-heartedly on alternative jobs till 30th November, 1967 and refused to work thereafter. The management had no option, and were compelled to lay them off from that date as there was no category of piece rated coal cutters left with them. As they had become surplus, the management ultimately retrenched them after due compliance with provisions of section 25F I.D. Act. On behalf of the workmen it was, however, contended by the Union that in a public meeting held on 28th November, 1967, these four workmen gave an application to the **President of**

the Union (Ex. W.3) pressing their demand for their original job. This provoked the management in laying them off soon after with effect from 30th November, 1967. The workmen had never refused to accept and to work on alternative jobs and which were never offered to them from and after 30th November, 1967. A number of junior workers were retained and these four were picked up for vindictive reasons because of their application dated 28th December, 1967. The union took up the case in conciliation and during the conciliation, the management *malafide* gave a notice of retrenchment dated 23rd January, 1968 and then retrenched the workers. The laying off and the retrenchment were both neither justified nor legal.

The management objected to the competency of the Union, Satpura Koyala Khadan Mazdoor Congress, to sponsor the dispute, and to represent the workmen. It was contended that the Union was not recognized and had little membership of workers of this colliery. Another Union, Rashtriya Koyala Khadan Mazdoor Sangh, is recognized and is a representative union of the colliery. It was also alleged that the four concerned workmen were not members of the union at the relevant time. Shri Ramnarayan Singh (W.W.2) Secretary of the Union came in evidence and stated that this union Satpura Koyala Khadan Mazdoor Congress is a union of the industry and it started functioning in this colliery in July, 1967 when a branch was opened. A number of workers were made members of the union during the months of August and September, 1967. He filed true extract of membership register (Ex. W.9) which would show that most of the workers were enlisted and made members in the months of August and September, 1967. He also proved the counterfoil receipts of all the four concerned workmen and which are [Ex. I. 1(A) to W.1 (D)]. Malikram one of the concerned workers has corroborated the position. There is, therefore, no merit in the objection that the four concerned workmen were not members of the union and the union was not competent to sponsor the dispute or to represent the workers.

Another objection taken in the written statement of the employers was that out of the four, two of the concerned workmen namely, Arjun and Kamal, accepted their full and final payment of all their claims on 5th March, 1968 before the date of reference and, therefore, there is no industrial dispute left with regard to these two workmen and no reference could have been made for atleast these two workmen. In proof of this, the employers filed payment sheets (Ex. E.6 and F.7) which would show that Rs. 800 and odd had been paid each to Kamal and Arjun. There is, however, no endorsement or any writing to indicate that the payment was accepted in full and final settlement of their claims. Even the manager, Shri Khanzode (Ex. W.1) did not specifically state anything on the subject. It is a well-known principle that rule of estoppel and acquiescence has no application in industrial adjudication (*vide* Guest, Keen, Williams Pvt. Ltd. Vs. P. J. Sterling A.I.R. 1959 S.C. 1279). This objection is, therefore, without any substance.

Another technical objection which was pleaded in the written statement of the employers is a plea to the effect that since the workmen themselves refused to accept alternative jobs, they should be deemed to have abandoned their duty and as such there was no case of lay off and retrenchment. This on the face of it is untenable. The employers themselves rightly or wrongly decided to lay off and can not be permitted now to repudiate it. They cannot be permitted to blow hot and cold in the same breath so as to contend that in fact there had been no lay off or retrenchment. It is an admitted position that the employers laid off these workers and subsequently retrenched them. It is on these admitted facts that the reference was made so as to determine the justifiability of the action of the management.

Coming to the merits of the controversy, the action of the management was clearly *malafide* and also illegal. The manager, Shri Khanzode (Ex. W.1) admitted that he abolished the category of piece rated coal cutters on economic grounds with giving any notice under section 9A I.D. Act. The workers affected by this action, according to him, were given alternative jobs and there is no dispute that they continued to work on such alternative jobs till 15th November, 1967 when there was break-down of the haulage. There was nothing wrong on the part of the workers to approach the management that they should be given their original job. The application (Ex. E.3), no doubt, is rather strongly worded and can be taken as an ultimatum to be effective from 20th November, 1967 but the fact remains that the workers remained on work till 30th November, 1967 when they were laid off. The management, it appears, got unnecessary scared and took the letter literally as a threat so as to pose a law and order question necessitating an approach to the police. There had been no violence or any untoward incident on the part of these four concerned workmen. The motive to lay them off evidently was prompted because these four workers had applied to the Union on 28th November, 1967 by means of application (Ex. W.3) so as to press for their old job. It is significant to note that these four only were compelled to remain on lay off and subsequently retrenched while the other eight who had joined in the application dated 15th November, 1967 were not so laid off nor retrenched.

The inevitable conclusion is that these four were picked up because of their application dated 28th November, 1967 to the Union. There is specific statement of Malikram (W.W. 1) that the management gave work to the remaining eight but not to him and the remaining concerned workmen. This was because the management wanted a written undertaking from them not to remain members of this Union and to which they were not agreeable. There is no rebuttal to this evidence. He had further stated that he never refused to accept alternative job and the assertion in notices dated 30th November, 1967 [Ex. W. 4(A) to W. 4(D)] in this respect was false. On behalf of the four concerned workers, after the receipt of lay off notice dated 30th November, 1967, the Union at once addressed a communication to the management dated 2nd December, 1967 (Ex. W.10) refuting the allegation that these workers had refused to accept alternative jobs and affirming that they were agreeable for any type of work which may be offered. It is significant to note that no reply was sent to this communication. Similarly for another communication dated 23rd December, 1967, no reply was sent. The explanation of the Manager that since the Union was unrecognized, therefore, no reply was sent to notice dated 23rd December, 1967 is on the face of it unacceptable. If the assertion was wrong, the management would have contravened it in the ordinary course. The fact that it came through an unrecognized Union should have made little difference. There was, therefore, no justification to pick up these four concerned workmen for lay off from 30th November, 1967 and the allegation that they had not refused to take up alternative job is a faked ground.

Apart from this, the legal aspect of the matter is still more damaging to employers and is incongruous. "Lay off" has been defined in section 2 (kkk) I.D. Act (omitting explanation and provisos) as follows:—

"Lay off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

As held by Supreme Court in *Workmen of Dewan Tea Estates Vs. Management of Dewan Tea Estates*, 1964-I.L.L.J. p. 358, the words "for any other reason" must be construed *eiusdem generis* with the words that precede them and the circumstances which would justify a "lay off" must be integrally connected with production. The failure, refusal or inability should be on the part of the employer and a subjective act on his part. It has nothing to do with the failure, refusal or inability of an employee to accept the work. Paradoxically the management's contention is the other way, namely that although they were prepared to provide work and had been so giving from August till 30th November, 1967, yet the lay off had to be resorted because the workmen concerned themselves refused to work on alternative employment. It follows, therefore, that the refusal as alleged was on the part of employee and not the employer. This does not come within the definition of "lay off". For refusal to accept alternative employment, if that was a fact, the employers could have resorted to any other action including dismissal but to conceive a lay off was wholly misguided. It was not a refusal envisaged by section 25E of the Act. There was no question of lay off in such a case.

Rule 75A of the Industrial Dispute Central Rules enjoins upon every employer to give notice of lay off in Form 0-1 and another notice in Form 0-2 when lay off is lifted. Such a notice has been made compulsory under sub-rule (2) irrespective of the fact whether the workmen who had been laid off are or are not entitled to compensation. No such notice was given by the management. The notices, (Ex. W. 4/A, B & C) which were given, are not in prescribed form but are in general form stating that as there was no work in Mine No. 9 for piece-rated coal cutters, therefore, they were laid off. The lay off was also invalid for not having been brought about after proper notice as required by rule 75A I.D. Act. For all these reasons, the lay off which was a misnomer, was wholly unjustified and invalid.

Coming to the retrenchment aspect of the matter, it appears that while conciliation proceedings were going on and the management had taken time, they suddenly resorted to retrenchment of these workmen. Notice of retrenchment was given on 22nd January, 1968 which have been filed as Ex. W. 18 to 21, by the workers themselves. The reason for retrenchment is stated to be that the company had no work to give for piece-rated coal cutting and as there is no scope for giving any other kind of work, consequently notices were being given for retrenchment under section 25F, I.D. Act to be effective from 23rd February 1968. For retrenchment, therefore, it was not asserted that the workers had refused to accept alternative employment. When there was no valid "lay off" as contemplated by section 25C, there is no question to attract the proviso to the

section so as to entitle the employers for a set off against compensation payable on retrenchment. For a valid retrenchment, certain mandatory formalities of law are necessary which, as required under section 25F are (a) notice in prescribed form according to Rule 76 of the I.D. Central Rules (b) compensation on prescribed rate and (c) notice in prescribed form 'P' to appropriate Government. None of these appear to have been complied with. There is no indication that any prescribed notice was sent to Government which is mandatory. Further, the rule of "last come first go" as recognised by Section 25G of the I.D. Act has to be statutorily observed by the employers in a *bonafide* manner. This appears to have been flouted with impunity. The manager, Shri Khanzode, did not state anything on the subject. On the contrary, the workers from the very beginning had been complaining that these workmen who were subsequently retrenched were not the junior most. During the period of lay off, it appears that the management put up a seniority list of coal cutters on the notice board, dated 18th December, 1967 (Ex. W. 5). Both the workmen and union objected to the correctness of this list by communications dated 23rd December, 1967 (Ex. W. 12 and W. 13). No reply was given to this objection. On behalf of the workmen, a list (Ex. W. 6) was filed and was proved by Malikram. According to him, there were as many as 70 coal cutters and all of them whose names have been shown in the last column of Ex. W. 6 are junior in length of service and have not been retrenched. There is no specific denial to this assertion. It must therefore be held that there had been a wanton disregard of this requirement. Retrenchment, therefore, was completely unjustified and illegal.

A highly technical objection pleaded by the employers in para 14 of the written statement may also be noticed. It was alleged that provision of Section 25F would not be attracted inasmuch as from August, 1967, the workmen had accepted alternative jobs. Their length of service, therefore, was only for a period of a little more than 3 months, there having been a new employment. This is wholly a flimsy ground and does not call for serious attention. The employment in Category V according to the Manager himself was continued throughout even after the workers ceased to be piece rated coal cutters. There was therefore no new employment.

Decision

The result is that the issue under reference must be answered in negative. The action of the management in "laying off" the four concerned workmen Arjun, Kamal, Malikram and Rajaram with effect from 30th November, 1967 and their subsequent retrenchment from 23rd February, 1968 was wholly unjustified. They are entitled to be reinstated with back wages and continuity of service. Whatever compensation they or any of them may have received towards lay off or retrenchment shall, however, be accounted for in computation of back wages. The Union will be entitled to costs from the employers which are assessed at Rs. 100/-.

Sd/- G. C. AGARWALA,
Presiding Officer.
15-10-68.
[No. 5/22/68-LRIL.]

S.O. 4060.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the Bhowra Colliery of Messrs Bhowra Kankanee Collieries Limited, Post Office Bhowra, District Dhanbad and their workmen, which was received by the Central Government on the 29th October, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer.

REFERENCE NO. 128 OF 1967

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES:

Employers in relation to the Bhowra Colliery of Messrs Bhowra Kankanee Collieries Ltd., Post Office Bhowra, District Dhanbad.

AND

Their workmen.

APPEARANCES :

For the employers.—Shri K. C. Nandkeolyar, Dy. Chief Personnel Officer.

For the workmen.—Shri B. Lall, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, 18th October, 1968/26th Asvina, 1890 Saka.

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Bhowra Colliery of Messrs Bhowra Kankanee Collieries Ltd., Post office Bhowra, District Dhanbad and their workmen, by its order No. 2/62-65-LRII, dated 18th March, 1966 referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below :

SCHEDULE

“Whether the dismissal of the following Coal Cutting Machine Mazdoor by the management of the Bhowra Colliery of Messrs Bhowra Kankanee Collieries Ltd., with effect from the 9th February, 1965 was justified? If not, to what relief are these workmen entitled?

1. Shri Surendra Majhi.
2. Shri Lakhan Mahato.
3. Shri Bacheha Singh.
4. Shri Ramayan Mahato.
5. Shri Sheo Nandan Mahato.
6. Shri Mathura Singh.

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 64 of 1966 on its file. Workmen filed their statement of demands. While it was pending before the Central Government Industrial Tribunal, Dhanbad the proceeding was transferred to this Tribunal, by the Central Government by its order No. 8/25/67-LRII, dated 8th May, 1967. Consequently, the reference is renumbered on the file of this Tribunal as reference No. 128 of 1967. Employers filed their statement of demands.

3. Parties filed a compromise memo stating that the dispute involved in the reference has been settled to the complete satisfaction of the parties. The compromise memo is duly verified. Having gone through the terms of compromise, I consider them as fair and reasonable and beneficial to the affected workmen. The compromise is, therefore, accepted and the award is made in terms of the compromise. The compromise memo is annexed herewith and is made part of the award. The award is submitted under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) N. VENKATA RAO,

Presiding Officer,

Central Govt. Industrial Tribunal (No. 2) Dhanbad.

**BEFORE THE PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) DHANBAD.**

REFERENCE No. 128/67

BETWEEN

**The Management of Bhowra Colliery of M/s. Bhowra Kankanee Collieries Ltd.,
P. O. Bhowra, Distt. Dhanbad.**

AND

Their workmen.

Joint petition of compromise on behalf of the parties.

The parties have compromised their dispute on the following terms mutually settled by them.

1. That all the workmen are reinstated with effect from 9th February, 1965 with continuity of their service.

2. That the period of their idleness will be considered as leave without pay.

3. That out of six workmen five have already been allowed to do their work except Sheo Nandan Mahato and it is agreed between the parties that they would continue to do their present work without any interference.

4. That Sheo Nandan Mahato would resume his duties any day but not later than a month after the publication of the Award.

5. That the compromise has been made voluntarily and in good faith.

It is therefore prayed that the Tribunal may be pleased to pass the award accordingly.

On behalf of the Workmen.

On behalf of the Employer.

(1) (Sd.) BABAN LAL.

(Sd.) K. C. NANDKEOLYAR,

(2) Illegible.

Dy. Chief Personnel Officer,
M/s. K. C. Thapar Bros. (P) Ltd.

Khan Mazdoor Congress

Affiliated-I. F. M. W.

P.O. Bhowra (Dhanbad)

Dhanbad.

Dated, the 29th August, 1968.

[No. 2/62/65-LRII.]

S.O. 4061.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal (No. 3), Dhanbad, in the industrial dispute between the employers in relation to the Loyabad Colliery of Messrs Burrakar Coal Company Limited [Messrs Bird and Company (Private) Limited, Managing Agents] and their workmen, which was received by the Central Government on the 28th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 3) AT DHANBAD

REFERENCE NO. 72 OF 1968

PRESENT:

Shri Sachidanand Sinha, Presiding Officer.

PARTIES :

Employers in relation to the Loyabad Colliery of M/s. Burrakar Coal Co. Ltd.

Versus

Their workmen.

APPEARANCES:

For employers.—Sri A. M. Joshi, Personnel Officer.

For workmen.—Sri Anant Sharma, Secretary, Bihar Koyla Mazdoor Sabha, P.O. Kusunda, Distt. Dhanbad.

INDUSTRY: Coal.

STATE: Bihar.

Dhanbad, the 18th October, 1968

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Loyabad Colliery of M/s. Burrakar Coal Co. Ltd. [Messrs Bird & Co. (Private) Limited, Managing Agents] and their workmen by its order No. 2/155/66-LRII, dated the 7th of January, 1967 referred to the Central Government Industrial Tribunal, Dhanbad under section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below :

SCHEDULE

"Whether the management of Loyabad Colliery, Post Office Bansjora (Dhanbad) of Messrs Burrakar Coal Company Limited, was justified in dismissing from

service Shri Rajendra Nath Upadhy, Cook in the Bird's Centary Hospital of Loyabad Colliery with effect from the 9th June, 1966? If not, to what relief is the workman entitled?"

The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 2 of 1967 on its file. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding was transferred by the Central Government's Order No. 8/25/68-LRII, dated the 8th of May, 1967 to the Central Government Industrial Tribunal No. 2, Dhanbad where it was numbered as reference No. 201 of 1967. The Central Government by its subsequent order No. 8/71/68-LRII, dated the 17th of August, 1968 transferred the dispute to this tribunal where it has been renumbered as reference No. 72 of 1968.

The parties negotiated the dispute for a mutual settlement and have settled it amicably. They have filed a compromise petition at annexure "A". According to the terms of compromise the concerned workman Sri Rajendra Nath Upadhy will be paid an *ex-gratia* amount of Rs. 1200/- (Rupees one thousand two hundred only) in full and final settlement of all his claims against the management. The terms may be considered satisfactory and is accepted. Accordingly an award is made in terms of joint petition of compromise annexure "A" which shall form part of the award. The award may be submitted to the Central Government under section 15 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,

Presiding Officer,
Central Government Industrial Tribunal,
No. 3 Dhanbad.

ANNEXURE "A"

BEFORE THE HON'BLE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 3 DHANBAD

REFERENCE NO. 72 OF 1968.

PARTIES:

Employers in relation to Loyabad Colliery of M/s. Burrakur Coal Co. Ltd., P. O. Bansjora, Distt. Dhanbad.

AND

Their workmen represented by the Bihar Koyla Mazdoor Sabha, Chhatatan'd Bazar, P.O. Kusunda, Distt. Dhanbad.

Joint Petition of Compromise.

The parties above-named most respectfully beg to submit as under:—

- (1) That the above matter was referred for adjudication *vide* Ministry of Labour, Employment & Rehabilitation (Deptt. of Labour & Employment) Notification No. 2/155/66-LRII, dated the 7th January, 1967, published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated the 21st January, 1967 as S.O. No. 257 at pages 144-145.
- (2) That the said matter is pending before this Hon'ble Tribunal for adjudication.
- (3) That the parties in the meantime have mutually discussed the matter and have arrived at a settlement in terms stated hereunder:

Terms of Settlement.

- (a) That without prejudice to the respective contentions of the parties, it is agreed that the workman concerned in the dispute namely Shri Rajendranath Upadhy will be paid an *ex-gratia* amount of Rs. 1200/- (Rupees one thousand two hundred only) in full and final settlement of all his claims against the Management.
- (b) That Shri Rajendranath Upadhy will have no claim for reinstatement or re-employment.
- (c) That the *ex-gratia* amount mentioned in Item (a) of this settlement will be paid to Shri Rajendranath Upadhy within 15 days from the date of this settlement.
- (d) That the parties will bear their respective costs of these proceedings.

In the circumstances the parties herein concerned most respectfully beg to pray that this Hon'ble Tribunal may graciously be pleased to accept this compromise and pass an Award in terms thereof.

And for this the parties as in duty bound shall ever pray.

For workmen.

(Sd.) ANANT SHARMA,
Secretary,
Bihar Koyla Mazdoor Sabha,
Chhatatand Bazar,
P.O. Kusunda,
Distt. Dhanbad.

For Employers.

(Sd.) G. S. SURI,
Dy. Supdt. & Agent,
Layabad Colliery of
M/s. Burrakur Co. Ltd.,
P.O. Bansjora,
Distt. Dhanbad.
(Sd.) A. M. Joshi,
Personnel Officer.

Dated, Dhanbad, the 17th October, 1968.

[No. 2/155/66-LRII.]

S.O. 4062.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the Bhowra Colliery, Post Office Bhowra, District Dhanbad and their workmen, which was received by the Central Government on the 26th October, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer.

REFERENCE No. 139 OF 1967

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES:

Employers in relation to the Bhowra Colliery, Post Office Bhowra District Dhanbad

AND

Their workmen.

APPEARANCES:

For the employers: Shri K. C. Nandkeolyar, Deputy Chief Personnel Officer.

For the workmen: Shri Ram Mitra, Secretary Bihar Koyla Mazdoor Sabha

STATE: Bihar.

INDUSTRY: Coal

Dhanbad 16th October 1968

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Bhowra colliery, Post Office Bhowra, District Dhanbad and their workmen, by its order No. 2/16/66-LRII dated 22nd April, 1966 referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

"Whether the dismissal of Shri Udairaj Pandey, Miner, by the management of the Bhowra colliery with effect from the 29th April, 1965 was justified? If not, to what relief is the workman entitled?"

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 77 of 1966 on its file. Workmen filed their statement of demands. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding was transferred to this Tribunal, by the Central Government by its order No. 8/25/67-LRII dated 8th May, 1967. Consequently, the reference is renumbered on the file of this Tribunal as reference No. 139 of 1967. Employers filed their statement of demands.

3. Shri Udairaj Pandey (hereinafter referred to as the affected workman) was a miner in Bhowra colliery of the employers. Sometime in the last quarter of 1960 fire broke out in the underground of No. 10 incline area and as such the workmen living in the allotted quarters and hutments in No. 10 incline area had to be removed to other safer place. They were asked to go to available quarters in No. 19 incline area. The affected workman and one Shri Sitaram Yadav occupied quarter No. 3 in Block No. 1 of number 19 incline area. These facts are not in dispute. The case of the workmen is that some time in 1965 the management tried to put in the quarter a third person, Shri Raghunath Shaw which the affected workman opposed. The management with a view to terrorise and victimise the affected workman issued a charge-sheet to him for the alleged disobedience of lawful and reasonable orders and disorderly behaviour. The affected workman submitted his explanation denying the charge allegation. The management held a fake enquiry and on the perverse findings of the Enquiring Officer dismissed him with effect from 29th April, 1965. The employers filed their statement of demands stating that the affected workman and Sarvashri Sitaram Yadav and Raghunath Shaw were allotted jointly the quarter in question, that the three lived in the quarter for some time, that the affected workman forcibly occupied the portion allotted to Shri Raghunath Shaw, that on his failure to obey instructions of the Labour Welfare Officer and the high-handed manner by which he turned out Shri Raghunath Shaw, the management issued the charge-sheet and caused a domestic enquiry to be held in which the affected workman participated, that as a result of the proper domestic enquiry the Agent of the colliery passed the order dismissing the affected workman with effect from 29th April, 1965 and that the action taken by the management against the affected workman was just and *bonafide*. The workmen were represented by Shri Ram Mitra, Secretary, Bihar Koyla Mazdoor Sabha and the employers by Shri K. C. Nandkolyar, Deputy Chief Personnel Officer. By consent of the workmen Exts. M1 and M2 were marked for the employers. The affected workman examined himself as WW1 and marked Exts. M3 to M7. The employers examined 3 witnesses and marked Exts. M8 to M11.

4. The charge-sheet issued against the affected workman is Ext. M11. It is stated therein that the quarter was allotted jointly to the affected workman and two others, that the affected workman forcibly occupied the rooms of Shri Raghunath Shaw, that the affected workman did not comply with the order of the Labour Welfare Officer and that, as such he was guilty of disorderly behaviour and wilful insubordination of the lawful and reasonable order of his superior. The explanation to the charge-sheet submitted by the affected workman is Ext. M4. He had stated therein that he had permitted Shri Raghunath Shaw to live with him but it was no more possible for him to allow Shri Raghunath Shaw to live in the quarter as his own family (Janana) had arrived. He denied that he was guilty of the charges framed against him. Ext. M4 is a notice of the enquiry. MW1 conducted the departmental enquiry in which, admittedly, the affected workman participated. The enquiry proceedings are Ext. M8, the enquiry report Ext. M9 and the dismissal letter Ext. M10. Statement of the witnesses recorded during the enquiry are Exts. M6 and M7. It is in the evidence of MW1 that he had read over and explained to the affected workman statements recorded by him and the affected workman affixed his signatures to the statements. The dismissal order is passed by the Agent on the recommendation of the Manager. I do not find any flaw in the procedure adopted by Enquiring Officer in conducting the enquiry. But the only question to be considered is whether on the facts admitted and proved the affected workman was guilty of misconduct in terms of order 27 of the Certified Standing Orders, Ext. M2. Though it is stated in the statement and chargesheet that the quarter in question was allotted jointly to the affected workman and Sarvashri Sitaram Yadav and Raghunath Shaw, the evidence brought on record is contrary to it. MW2 was the Welfare Officer in 1965. He does not say anywhere that the quarter was allotted. What he says is that the affected workman and Sarvashri Sitaram Yadav and Raghunath Shaw were provided accommodation in the quarter. Shri Raghunath Shaw is examined as MW3. He says that he occupied the quarter first and lived in it alone for about 4 or 5 years and then the affected workman joined him. He also says that when he went to live in the quarter it was lying vacant and he was first to occupy it, then Shri Sitaram Yadav occupied a portion and then the affected workman one more portion in the same quarter. From the statement of the employers and the evidence of Raghunath Shaw, MW3 it emerges that the quarter in question along with others in number 19 incline were still under construction and owing to the emergency workmen living in quarters and hutments in number 10 incline area were allowed to go and occupy available incomplete quarters in number 19 incline area. The Welfare Officer, MW2 has conceded that owing to the sudden development of the situation no authorisation letters were issued to the affected workman and others. The New Housing Scheme of coal mines is marked as Ext. M1. As per clause 10 of the Scheme in the matter of allotment of quarters the management of the colliery is governed by the Rules of Allotment and the Rules are appended to the Scheme. As per Rules 4, 5 and 6 the allottee has to execute an agreement in the prescribed form, the allotment should be made by the employers in the manner prescribed maintaining a register for the purpose and the allotment should be made in order of length of service of the workmen. Thus, it is manifest that the quarter in question was not allotted to the

affected workman or to either Shri Sitaram Yadav or Shri Raghunath Shaw and owing to fire in number 10 incline the workmen living in quarters and hutments in number 10 incline area were asked to go and occupy available incomplete quarters in number 19 incline area. It probablise that the affected workman and Sarvashri Sitaram Yadav and Raghunath Shaw went and occupied quarter No. 3 in Block I in number 19 incline area, they lived together for some time without any trouble and when the family (Janana) of the affected workman arrived the affected workman did not think it proper to allow Shri Raghunath Shaw to live in the same quarter any more and thus, quarrel broke out. When the quarter in question was not properly allotted and a quarrel ensued among occupants thereof it was a private quarrel to be settled otherwise than by the intervention of the Labour Welfare Officer, MW2. The instructions of the Labour Welfare Officer, MW2 to the affected workman to allow Shri Raghunath Shaw to continue to occupy the quarter, was not connected with his employment and as such non-compliance with it cannot be termed as insubordination or disobedience. Merely because a workman happens to live in the colliery area the Labour Welfare Officer cannot have right to order him about anything and everything and charge him for disobedience or insubordination when the order is not complied with. Under order 27(i) of the Certified Standing Orders, Ext. M2 the alleged wilful insubordination or disobedience should be of a lawful or reasonable order. The order of the Welfare Officer to the affected workman in the instant case to allow Shri Raghunath Shaw to continue to live in the quarter is not in accordance with law or within the powers of a Labour Welfare Officer. There is absolutely no evidence about disorderly behaviour of the affected workman. Thus, I find that the finding of the Enquiring Officer that the affected workman was guilty of misconduct is perverse and, consequently the dismissal of the affected workman cannot sustain.

5. I, therefore, find that the dismissal of the affected workman, Shri Udairaj Pandey, miner, by the management of Bhowra Colliery, with effect from the 29th April, 1965 was not justified and, consequently, the affected workman is entitled to his wages, emoluments and benefits with effect from the 29th April, 1965 to the date of his reinstatement as though he was continuously in service. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947. Yv

(Sd.) N. VENKATA RAO,
Presiding Officer

Central Government Industrial Tribunal (No. 2), Dhanbad.

[No. 2/16/66-LRII.]

S.O. 4063.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Bhulanbararee Colliery of Messrs Bhulanbararee Coal Company Limited, Post Office Patherdih, District Dhanbad and their workmen, which was received by the Central Government on the 29th October, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT :

Shri Nandagiri Venkata Rao, Presiding Officer.

REFERENCE No. 135 OF 1967

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES :

Employers in relation to the Bhulanbararee colliery of Messrs Bhulanbararee Coal Company Limited, Post Office Patherdih, District Dhanbad.

AND

Their workmen.

APPEARANCES :

For the employers—Shri S. S. Mukherjee, Advocate.

For the workmen—Shri Shankar Bose, Secretary, Colliery Mazdoor Sangh.

STATE : Bihar

INDUSTRY : Coal.

*Dhanbad, 17th October, 1968**25th Ashvina, 1890 Saka.*

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Bhulanbararee Colliery of Messrs Bhulanbararee Coal Company Limited, Post office Patherdih, District Dhanbad and their workmen, by its order No. 2/37/66-LRII dated 18th April, 1966 referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below :

SCHEDULE

"Whether the management of the Bhulanbararee Colliery of Messrs Bhulanbararee Coal Company Limited was justified in stopping the following three workmen from work with effect from the 5th January, 1966 ? If not, to what relief are these workmen entitled ?

1. Shri Abbi Biswas, Pump Khalasi E.B. No. 15027
2. Shri Kefaith Mea, Pump Khalasi E.B. No. 15064
3. Shri Jahur Mia, Pump Khalasi E.B. No. 15029

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 73 of 1966 on its file. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding was transferred to this Tribunal, by the Central Government by its order No. 8/25/67-LRII dated 8th May, 1967. Consequently the reference is renumbered on the file of this Tribunal as reference No. 135 of 1967. Employers as well as the workmen filed their statement of demands.

3. Parties filed a compromise memo stating that the dispute involved in the reference has been settled to the complete satisfaction of the parties. The compromise memo is duly verified. Having gone through the terms of compromise, I consider them as fair and reasonable and beneficial to the affected workmen. The compromise is, therefore, accepted and the award is made in terms of the compromise. The compromise memo is annexed herewith and is made part of the award. The award is submitted under Section 15 of the Industrial Disputes Act, 1947.

Sd/- N. VENKATA RAO,

Presiding Officer,

Central Govt. Industrial Tribunal (No. 2)
Dhanbad.

BEFORE THE HON'BLE PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL (No. 2),
DHANBAD.

In the matter of

REFERENCE No. 135 OF 1967

PARTIES :

Employers in relation to Bhulanbararee Colliery of M/s Bhulanbararee Coal Co. Ltd.

AND

Their Workmen.

The humble Petition on behalf of the parties above-named.
Most Respectfully Sheweth:—

(1) That without prejudice to the respective contentions of both Parties, the dispute of the present Reference has been amicably settled between the said Parties on the following terms:—

- (a) That Shri Abhni Biswas had been already reinstated in service and he is working in the Colliery. The Union, therefore, does not want to pursue his case before this Hon'ble Tribunal and the dispute regarding this workmen may be treated as finally settled.

- (b) That S/Shri Kefaith Mea and Jahur Mea are not interested in their claim for reinstatement and do not want to serve the said Employers any further. Their claim for reinstatement is, therefore, dropped.
- (c) That the Employers will pay a lump sum of Rs. 1000/- (Rupees One thousand) only to each of the above-named two workmen, namely, Sri Kefaith Mea and Sri Jahur Mea as an *Ex-gratia* account in full and final settlement of all their claims and demands against the said Employers till the date of this settlement.
- (d) That the above-mentioned *Ex-gratia* payments of Rs. 1000/- each to the two workmen will be made by the Employers by 27/9/68.
- (e) That the above terms of settlement finally resolved the dispute concerning the three workmen mentioned in the Schedule to the terms of Reference.
- (f) That the Employers will pay a sum of Rs. 100/- (Rupees One hundred) only to the Union as the cost of the present proceedings.

It is, therefore, humbly prayed that the above settlement may kindly be recorded and an Award passed in terms thereof.

For the workmen:—

(Sd.) SHANKER BOSE,

Secretary,

Colliery Mazdoor Sangh.

(Sd.) ABHINI BISWAS,

Bulanbararee Colliery.

(Sd.) KEFAITH MEA,

Bhulanbararee Colliery.

Dated the 30th September, 1968.

For the Employers,

(Sd.) J. N. P. SAH,

Labour Adviser,

Bhulanbararee Coal Co. Ltd.

(Sd.) S. S. MUKHERJEE,

Advocate.

[No. 2/37/66-LRII.]

New Delhi, the 6th November 1968

S.O. 4064.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 3), Dhanbad, in the industrial dispute between the employers in relation to the Gaslitan Colliery, Post Office Sijua, District Dhanbad and their workmen, which was received by the Central Government on the 28th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 3) AT DHANBAD

REFERENCE NO. 56 OF 1968.

PRESENT:

Shri Sachidanand Sinha, Presiding Officer.

PARTIES:

Employers in relation to the Gaslitan Colliery.

Vs.

Their workmen.

APPEARANCES:—

For Employers.—Sri S. S. Mukherjee, Advocate.

For workman.—Sri Prasant Burman, Secretary Khan Mazdoor Congress.

INDUSTRY: Coal.

STATE: Bihar.

Dhanbad, dated the 16th October, 1968

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Gaslitan Colliery, P.O. Sijua, District Dhanbad and their workmen, by its order No. 2/19/66-LRII dated the 28th of October, 1966 referred to the Central Government Industrial Tribunal, Dhanbad under section 10(1)(d) of

the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matter specified in the schedule annexed thereto. The Schedule is extracted below:

SCHEDULE

"Whether the stoppage of work of Shri Surajbali Jaiswara, miner of Gaslitan Colliery, by the management with effect from the 18th November, 1965 was justified? If not, to what relief is the workman entitled?"

The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 149 of 1966 on its file. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding was transferred to the Central Government Industrial Tribunal No. 2, Dhanbad by the Central Government order No. 8/25/67-LRII dated the 8th May, 1967 where it was numbered as reference No. 185 of 1967. By its subsequent order No. 8/71/68-LRII dated the 17th of August, 1968 the reference was transferred to this Tribunal where it is renumbered as reference No. 56 of 1968.

On behalf of the workmen the written statement was filed on 3rd April, 1967 by Shri Gopal Chandra Munshi, General Secretary, Khan Mazdoor Congress. The case made out in the written statement is that the concerned workman Sri Surajbali Jaiswara was stopped from duty illegally and unjustifiedly from 18th November, 1965. This was an act of victimisation as the concerned workman Sri Surajbali Jaiswara was an active member of the Khan Mazdoor Congress and that his activities were not looked favourably by the management. The management also took the resignation letter from the concerned workman under duress and the date was wrongly mentioned in that resignation letter as 17th November, 1965.

The Employers filed their written statement on 28th September, 1967. Their case is that Sri Surajbali Jaiswara was working as a miner in the colliery and that he voluntarily submitted his resignation on 17th November, 1965. By letter dated 19th November, 1965 Sri Surajbali Jaiswara was informed that his resignation had been accepted and he was asked to collect all his legal dues. Subsequently Sri Surajbali Jaiswara came to the office to collect his dues and demanded bonus for quarter ending December, 1965 and leave wages for the year 1965. But his aforesaid demand was not admissible. He also demanded his provident fund amount and it was pointed out to him by the management that for that purpose he had to file an application before the Coal Mines Provident Fund Commissioner. Therefore, according to the management Sri Surajbali Jaiswara was not stopped from the work with effect from the 18th of November, 1965.

It has further been contended that the management had no knowledge that Sri Surajbali Jaiswara was a member of the Khan Mazdoor Congress or of any union and that the act of the management was not on account of victimisation.

It is further contended that the reference itself was invalid inasmuch as the Ministry after due consideration by their letter dated the 25th February, 1966 informed the parties that the Government of India did not consider the dispute fit for reference to an Industrial Tribunal for adjudication because the workman concerned had voluntarily submitted his resignation and the management was ready to pay his legal dues and that no additional materials after the above decision of the Government of India were placed before it to make the present reference.

Only one witness viz. Sri Birendra Bahadur Singh the Personnel Officer of the Gaslitan Colliery was examined on behalf of the management and two witnesses were examined on behalf of the workmen. Ext. M. 1 to M. 3 were marked on behalf of the management.

The case of the management is that the workman was not stopped from his work from 18th November, 1965. On the other hand he voluntarily submitted his resignation letter on 17th November, 1965 which was accepted by the management. Ext. M. 2 is a letter of resignation. According to the workmen the letter of resignation (Ext. M. 2) was obtained under duress.

In this connection we have got the oral testimony of the concerned workman Sri Surajbali Jaiswara (WW. 1) who had stated in his evidence that the resignation letter (Ext. M. 2) was taken under duress and that four persons caught hold of him and forcibly took his thumb impression on Ext. M. 2. There is no other eye witness on this point.

It is stated that the concerned workman Sri Surajbali Jaiswara told about the occurrence to Sri Gopalchandra Munshi (WW. 2) while the dispute was pending before the Assistant Labour Commissioner. There is no evidence that he informed about this occurrence in writing before any other authority or even told about the incident immediately after the occurrence. In this evidence the concerned workman has stated that his thumb impression was taken in presence of Sri B. B. Singh, the Personnel Officer of the

management. Sri B. B. Singh has been examined on behalf of the management and he has denied the fact that the thumb impression of the concerned workman was taken on the resignation letter under duress in his presence.

Therefore, on this point we have got only the solitary statement of the concerned workman himself. There is no other witness to corroborate this fact. In this view of evidence I am not prepared to believe that the resignation letter (Ext. M. 2) was obtained under duress.

It is stated on behalf of the workmen that since Sri Surajbali Jaiswara was an active member of Khan Mazdoor Congress and his activity was not looked with favour by the management and it was on this account that he was victimised. But this fact in itself is not sufficient to prove the charge of victimisation.

The management has also challenged the validity of the reference. In this connection they have filed Ext. M. 1 which is a letter dated the 25th of February, 1968 by the Ministry to the Manager of the Gaslitan Colliery in which it has been stated that the Government of India does not consider the dispute fit for reference to an Industrial Tribunal for adjudication because the workman concerned has voluntarily submitted his resignation and the management was ready to pay his legal dues.

On this ground it is contended that the reference is invalid. The contention of the management is that when the Government once declares that an Industrial Dispute does not exist in respect of certain demands and after having once recorded such a finding and after communicating the same to the parties concerned the Government becomes *functus officio qua* those demands.

In this connection the management has cited the case law reported in 31 Factories Journal Reports, 1966-67, page 266 [Gandhara Transport Co. (P) Ltd. Vs. State of Punjab and others] where it has been observed as follows :

"It is settled law that once the appropriate Government has exercised its powers under section 10(1) of the Industrial Disputes Act, 1947 and made a reference of any industrial dispute it becomes *functus officio* and has no jurisdiction to subsequently amend, cancel or supersede the reference. In some cases it has even been held that the scope of a pending reference cannot be extended or enlarged by the appropriate Government by an amending notification. Do the same principles apply to a case where Government once declares that an industrial dispute does not exist in respect of certain demands and does the Government become *functus officio qua* those demands after having once recorded such a finding and after communicating the same to the parties concerned? In the nature of things this question does not appear to admit of an inflexible answer which would be correct for all possible circumstances."

It was urged on behalf of the workmen that that the making of reference under section 10(1)(d) of the Industrial Disputes Act, is an administrative act and that the Government could always review its previous decision and make a reference provided it acts bona fide and within a reasonable time. There is no statutory prohibition against such a review.

This case is concluded on facts and we may not enter here on an academic discussion on this technical point of law.

In view of the evidence I hold that the workmen failed to prove the charge of victimisation and that Sri Surajbali Jaiswara was not stopped from the work with effect from the 18th November, 1965, by the management, and that he is not entitled to any relief.

This is my award. It may be submitted to the Central Government under section 15 of the Industrial Disputes Act, 1947.

(Sd.) SACHIDANAND SINHA,

Presiding Officer,

Central Govt. Industrial-Cum-Labour Court No. 3, Dhanbad.

[No. 2/19/66-LRII.]

S.O. 4065.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the matter of an application under section 33A of the said Act, from Shri Shyama Pada Gupta, Laboratory Assistant, Sanctoria Hospital of Messrs Bengal Coal Company Limited, Post Office Dishergarh, District Burdwan (West Bengal) which was received by the Central Government on the 25th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA
MISC. APPLICATION NO. D OF 1968

(Under Section 33A of I.D. Act)

PARTIES:

Shri Shyama Pada Gupta, Laboratory Assistant,
Sanctoria Hospital of M/s. Bengal Coal Co. Ltd., Burdwan—*Applicant*.

Vs.

The Management of Sanctoria Hospital of M/s. Bengal Coal Co.—*Opp. Party*.
LTD., P.O. DISHERGARH, BURDWAN

PRESENT:

Shri B. N. Banerjee,

Presiding Officer.

Appearances:

On behalf of Applicant—Shri J. K. Gupta, Secretary, Sanctoria Hospital Nursing Staff & Employees' Union.

On behalf of Opposite Party—Shri B. P. Kabir, Security Officer.

STATE: West Bengal

INDUSTRY: Coal Mines.

AWARD

This is an application by a workman, under Section 33A of the Industrial Disputes Act, 1947, complaining against his transfer, pending an industrial dispute before this tribunal, without obtaining approval from this tribunal. Reference that was pending before this tribunal, at the time when this application was made, has now been disposed of. It was submitted on behalf of the applicant that attempts have been made to raise an industrial dispute over the transfer of the applicant. In view of that, this application was not pressed for hearing.

2. I, therefore, dismiss this application but I make it clear that dismissal of this application will not, in any way, prejudice the workman from raising an industrial dispute in the matter of his transfer, if that can be raised under the law.

This may be treated as my award.

Dated,

October 19, 1968.

(Sd.) B. N. BANERJEE,
Presiding Officer.

[No. 6/56/68-LR.II.]

S.O. 4066.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the management of Ballarpur Colliery of Messrs Ballarpur Collieries Company Limited, Post Office Ballarpur, District Chanda (Maharashtra) and their workmen which was received by the Central Government on the 29th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR.

Dated September 5, 1968

PRESENT:

Shri G. C. Agarwala, Presiding Officer.

Presiding Officer.

(1) CASE No. CGIT/LC(R)(31)/68 (WORKMAN CONCERNED, SITARAM).

(2) CASE No. CGIT/LC(R)(32)/68 (WORKMAN CONCERNED, LAXMAN BIKRU).

(3) CASE No. CGIT/LC(R)(33)/68 (WORKMAN CONCERNED BABURAO TUKARAM).

PARTIES:

Employers in relation to the management of Ballarpur Colliery of Ballarpur Colliery Company Limited, Post Office Ballarpur, District Chanda (Maharashtra State).

Vs.

Their Workmen represented through the President, B. Pradesh Mine Workers' Union, Ballarpur (M.S.).

APPEARANCES:

For employers

S/Sri S. V. Kanade, Personnel Officer and
M. Kailash Kumar, Officer.

*For employers—*S/Sri S. V. Kanade, Personnel Officer and M. Kailash Kumar, Officer.
*For workmen—*Sri R. K. Haldulkar, President, Bombay Pradesh Mine Workers' Union, Ballarpur (M.S.).

I&4Z:98fl: Coal Mine.

DISTRICT: Chanda (M.S.).

AWARD

These are three cases between the same parties, the employers being the management of M/s. Ballarpur Colliery Company Limited which has head office at Nagpur and the workman concerned in each case is represented by the Bombay Pradesh Mine Workers' Union. The subject matter of dispute is identical, namely whether the so called resignation letters purported to have been signed by the workers concerned dated 3rd February, 1968 were genuine resignations or had been fraudulently obtained by the management. In case No. 31/68, the workman concerned is Sitaram, Haulage Mazdoor and case was referred to this Tribunal by Notification No. 3/6068-LRII dated 19th April, 1968. The dispute as stated in the schedule to the order of reference was "Whether the management of Ballarpur Colliery, Post Office Ballarpur, District Chanda (Madhya Pradesh) has fraudulently obtained the thumb impression of Shri Sitaram son of Shiva, Haulage Mazdoor, on the letter of resignation? If so, to what relief is the workman entitled?" In Case No. 32/68, the workman concerned is Laxman Bikru, which was referred to this Tribunal by Notification No. 3/5/68-LRII dated 23rd April, 1968. The dispute though identical was differently worded as under:—

"Whether Shri Lazman Bikru, Sand Packing Fitter in Ballarpur Colliery, Ballarpur resigned from his job voluntarily or whether his resignation was obtained fraudulently by the management? In the latter case to what relief is he entitled?"

It may be mentioned that Laxman Bikru has since then died after the reference but before the hearing was concluded and the Union which was representing him did not proceed further with the case. In case No. 33/68, the workman concerned is Baburao Tukaram, Haulage Mazdoor, which was referred to this Tribunal by Notification No. 3/7/68-LRII dated 18th April, 1968 with the terms of reference as "Whether the management of Ballarpur Colliery, Post Office Ballarpur, District Chanda (Madhya Pradesh) has obtained resignation from Shri Baburao Tukaram Wankhade, Haulage Mazdoor fraudulently? If so, to what relief is the workman entitled?"

2. The facts of the case are that Sitaram Shiva workman concerned in case No. 31/68, was examined by the Medical Officer of the Colliery hospital on 12th August, 1967 and as his vision was found defective he was advised to consult a specialist. On the strength of this, the management informed the worker to consult specialist and then report for work if found fit. The management contended that on 3rd February, 1968 he tendered a voluntarily resignation letter, copy of which is Ex. E/C, and the management accepted the same by means of letter, copy Ex. E/4. In the case of Laxman Bikru since dead, it was similarly alleged that he was as a result of medical examination conducted by the Colliery Doctor on 5th March, 1967 found to be unfit and was advised to consult specialist by the management. He similarly submitted resignation on 3rd February, 1968. In the case of Baburao Tukaram, workman in case No. 33/68, the allegation is that he was examined by the Colliery Doctor on 23rd November, 1967 and was found to be suffering from general debility. Consequently, he was advised by the management to undergo necessary treatment and then report for work. As in the case of other two, he also submitted his resignation on 3rd February, 1968 which was similarly accepted on the same date.

3. The workers on the other hand contended that all this was a device to get rid of them thereby indulging in unfair labour practice. They consulted specialist and obtained medical certificate of their fitness, there having been no defect with them. Sitaram Shiva alleged that he sent the certificate and application on 8th January, 1968 about his fitness which was acknowledged by the Manager on 9th January, 1968 but he sent no reply. He consequently came on 3rd February, 1968 for work. The Manager was not

available but his Secretary, Sri Rangnathan, obtained his thumb mark on false representation that an application was necessary before resumption of duty. He, therefore, gave thumb mark. The defence of Baburao Tukaram, workman concerned in case No. 33/68, is also similar that Sri Rangnathan obtained his signature by false representation on 3rd February, 1968. They were astonished to get the letters that their resignations had been accepted which they had not tendered at any time. It is needless to state the case of Laxman Bikru though his defence was also identical.

4. Before taking up the controversy on merits certain preliminary objections raised on behalf of the management may first be disposed of. Firstly it is contended that the dispute in each case remained an individual dispute and is not covered by exception now embodied by Sec. 2-A I.D. Act. The non-employment of these workers on the ground of an assumed resignation is evidently termination of service and clearly falls under Sec. 2-A of the I.D. Act. The disputes shall, therefore, be deemed to be industrial disputes.

5. The next objection taken is that the description of the employer has been wrongly given. In the reference order, the management has been described as M/s. Ballarpur Colliery Company Limited, P.O. Ballarpur, District Chanda (Madhya Pradesh) and the order of reference had been forwarded to the Director of the Company at Nagpur. It was contended that M/s. Ballarpur Colliery Company is not a limited company and there is no Director. Further Chanda is not situated in Madhya Pradesh but in Maharashtra State. All these are trivial points of misdescription which do not affect the validity of the reference. Another similar flimsy objection taken was that a copy of the order of reference does not seem to have been sent to workman concerned. This is wrong as a fact as the order of reference was sent to all the workers and who did make an appearance before this Tribunal. These preliminary objections, therefore, were wholly frivolous.

6. Coming to the merits of the case, the circumstances are so compelling that they must lead to the acceptance of the version as stated by the workmen. Leaving aside the case of Laxman Bikru who is dead, the other two concerned workmen, Sitaram Shiva and Baburao Tukaram, came in evidence and examined themselves. According to Sitaram Shiva, he obtained the certificate of Dr. Sardeshpande (Ex. W/2). He went with this certificate to the office for work but Sri Rangnathan told him that the Manager would not see him. Consequently, he sent the certificate along with an application by post on 8th January, 1968, true copy of which is Ex. W/4. He has filed the acknowledgment card (Ex. W/3) and true copy of the certificate of the doctor. The Manager, Sri M. K. Jha (Ex. W. 3) admitted his signature on A/C but simply denied to have knowledge about the fact whether any application, copy of which is Ex. W/4, was received by him. He admitted that he sent no reply. Obviously such an application was received by the management and which confirms the fact that worker came with the medical certificate of fitness for work but was not allowed to be interviewed. The management did not take any action on this application. Baburao Tukaram, the other worker, also produced a medical certificate of the same doctor, Sri Y. H. Sardeshpande (Ex. W/2) dated 30th December, 1967 in which it is stated that Baburao Tukaram was physically fit to perform duties in the colliery. According to him as also Sitaram Shiva, they both came on 3rd February, 1968 so as to take wage for 26th January, 1968 which was a paid holiday. It was for this reason that they both happened to be there on the same date when Sri Rangnathan obtained their signature on the pretext that applications would be necessary before they could be allowed to resume work. Believing him, these persons gave their thumb marks. There was no witness by the name of Chitale, a Peon in the room of Sri Rangnathan who after obtaining their thumb marks gave another paper which they thought to be permission to resume duty. Outside the office they got the papers read by the Compounder of the Dispensary who told them about the contents of the letter, namely that their resignations had been accepted. It was then that they came to know of the fraud. Sri Rangnathan no doubt has denied this but there are strong indications to support the workmen's case that a fraud was practised on them. It is significant to find that all the three letters of resignation dated 3rd February, 1968 are in the same writing and bear the thumb marks in the same ink. Sri M. K. Rangnathan (Ex. W. 2) stated that he was requested by these three workers to write resignation letters and therefore he did it. They themselves brought the Peon, Sri G. P. Chitale (Ex. W. 1) as a witness and that is how the peon's signature appeared on the resignation letters. It is strange to find that the reason for resignation in these resignation letters is one and the same, namely that they were not feeling well. Sri Rangnathan did not care to enquire and probe further into the extraordinary conduct on the part of the workers why they were resigning. That he was not stating the truth is evident by the fact that he could not state whether all three workers came to him together or one by one and not even the fact whether they came to him on the same dates or on different dates. He admitted that he did not take the workers to the Manager for which he

could offer no explanation. The Peon, G. B. Chitale (E.W. 1) stated that he signed as a witness because he was asked by somebody to sign. He contradicted Sri Rangnathan by stating that all the three did not come together but came at different times. With what gap and in what order, he did not remember. He did not corroborate Sri Rangnathan by stating that he had been called by the workers to go and attest their signatures on resignation letters. The evidence of the Manager, Sri M. K. Jha, is rather extraordinary. He recorded the note that resignations be forthwith accepted without verifying whether they were genuine resignations. He found the resignations on the table and he recorded the note. For not calling the workers to enquire and verify the fact he stated that the reason had already been mentioned in the letter resignations. The only reason stated in the letters which was common in all the three, was that they were tendering resignation because of indisposition. The last witness of the management was Sri V. N. Niding (E.W. 4) who proved payment to Laxman Bikru on 7th September, 1967. We are not concerned now with the case of Laxman Bikru since he is dead. There is absolutely no explanation why workers will resort to this extraordinary conduct against their own detriment by tendering resignation letters. This is against the natural course of human conduct. Having rendered service for such a length of time and not having reached the superannuation age, just because the colliery dispensary doctor had found some defect, they would not have easily agreed in tendering resignations unless they had been thorough cripples or there were some other extraordinary reasons for their so doing. Evidently they were not physically disabled and they disputed the opinion of the Colliery Doctor about their physical disability by obtaining certificate of an Eye Specialist. In all probability they must have come with a view to secure employment with these certificates. There cannot be any reason for them to have resigned even if they did not possess the certificate of fitness. Witnesses may lie but the circumstances will not. There are obvious circumstances in this case which lend support of the version of workers and despite the evidence of the Manager, his P.A. and the Peon which will have to be rejected as wholly untrust-worthy, I must hold that these poor workers had been victims of fraud and they had not resigned. It may be noted that during the conciliation proceedings, as the conciliation failure report would show, the management took no part in the conciliation which is also indicative of lack of bonafides on their part. The management had clearly been guilty of unfair labour practice by committing deception and fraud on workers.

Decision

The result is that so far as case No. CGIT/LC(R)(32)/68 of Laxman Bikru is concerned no adjudication is made as the workman concerned has died and the reference would therefore lapse. In the case of Sitaram Shiva [Case No. CGIT/LC(R)(31)/68] and aburao Tukarman [Case No. CGIT/LC(R)(33)/68] it must be held that the thumb impression of Sitaram Shiva was fraudulently obtained on the so called letter of resignation dated 3rd February, 1968 and so was the case with Baburao Tukaram. They both are entitled to be reinstated with back wages. It is, therefore, directed that they shall be reinstated and shall be paid back wages which shall however be payable with effect from 3rd February, 1968. Each of them will further be entitled to Rs. 100 as costs of the proceedings from the management.

(Sd.) G. C. AGARWALA,

Presiding Officer.

The 2nd September, 1968.

[No. 3/6/68-LRII.]

S.O. 4067.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Bon-Jamihari Colliery, Post Office Salanpur, District Burdwan and their workmen, which was received by the Central Government on the 29th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE NO. 15 OF 1968

PARTIES:

Employers in relation to the Bon-Jamihari Colliery.

AND

Their workmen

PRESENT:

Shri B. N. Banerjee, Presiding Officer.

APPEARANCES:

On behalf of Employers—Shri K. N. Dutt, General Manager.

On behalf of Workmen—Shri Provat Goswami, Org. Secretary, Colliery Mazdoor Union.

STATE: West Bengal.

INDUSTRY: Coal Mines.

AWARD

By Order No. 6/14/68-LRII, dated March 14, 1968, the Central Government referred the following dispute between the employers in relation to Bon-Jamihari Colliery and their workmen, to this tribunal, for adjudication:

“(1) Whether the retrenchment of Sarvashri Mathan Singh and Kailash Singh, Surface Pump Khalasis by the management of Bon-Jamihari Colliery, Post Office Salanpur, District Burdwan, with effect from the 26th December, 1967 was justified?

(2) If not, to what relief are the workmen concerned entitled?”

2. The cause of the workmen was espoused by a trade union known as Colliery Mazdoor Union, which filed a written statement. The management did not file any written statement. At the hearing to-day, the management was represented by its General Manager, K. N. Dutt and the trade union was represented by its organising Secretary, Provat Goswami. The parties to the dispute filed a joint petition of compromise, before this tribunal, settling their disputes and prayed that an award may be made in terms of the petition of compromise. In my opinion, the petition of compromise is lawful and fully and completely settles the industrial dispute between the parties.

3. I, therefore, make an award in terms of the compromise petition. Let the compromise petition form part of this award.

Dated, October 26, 1968.

(Sd.) B. N. BANERJEE,
Presiding Officer.

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL, CALCUTTA

IN THE MATTER OF REFERENCE NO. 15 OF 1968

AND

IN THE MATTER OF AN INDUSTRIAL DISPUTE

BETWEEN:

The Employers in relation to the Bon-Jamihari Colliery, P.O. Salanpur, District Burdwan.

AND

Their workmen represented by Colliery Mazdoor Union (INTUC), Head office 27, G.T. Road, Bastin Bazar, Asansol, Unit Office—Salanpur, Burdwan.

Joint Petition of Compromise

The parties aforesaid most respectfully beg to submit as under:

1. The issues referred to this Hon'ble Tribunal for adjudication read as follows:

“Whether the retrenchment of Sharvashri Mathan Singh and Kailash Singh, surface pump khalasis by the Management of Bon-Jamihari Colliery, P.O. Salanpur, Dist. Burdwan, with effect from 26th December, 1967, was justified?

If not, to what relief are the workmen concerned entitled?”

2. This Hon'ble Tribunal has called upon the parties to submit their written statements which they may have done.

3. Both the parties to this reference, however, have reached to an amicable settlement by mutual negotiations on the following terms:

(a) The Management shall re-instate Shri Mathan Singh with effect from 15th November, 1968 in service.

(b) The Union does not press the case of Kailash Singh as he has accepted his all legal dues including retrenchment benefit.

- (c) The Management shall maintain continuity of service of the workman under reference and the period of unemployment would be treated as leave without wages from the date of retrenchment to the date of resumption of duty, but an *ex gratia* payment will be made to the workman and the quantum of such payment will be decided by the General Manager.
- (d) The workmen or his Union acting on their behalf have no other claims against the Management arising out of the present reference.
- (e) The parties will bear their own costs.

4. It is, therefore, most respectfully prayed that this Hon'ble Tribunal may be graciously pleased to give its award in the aforesaid terms thereof.

And, for this, the parties shall, as in duty bound, ever pray.

(Sd.) K. N. DUTT, General Manager.

(Sd.) PROVAT GOSSAMI.

Org. Secretary, Colliery

Mazdoor Union, for Workmen.

[No. 6/14/68-LRII.]

New Delhi, the 7th November 1968

S.O. 4068.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the Indian and Central Jharia Colliery, Post Office Jharia, District Dhanbad and their workmen, which was received by the Central Government on the 29th October, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer

REFERENCE No. 125 OF 1967

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES :

Employers in relation to the Indian and Central Jharia Colliery, Post Office, Jharia District Dhanbad

AND

Their workmen

APPEARANCES:

For the employers: Shri P. C. Sharma, Superintendent of Collieries South Goluakdih Coal Co., Jharia.

For the workmen: Shri H. N. Singh, Vice President, Koyla Mazdoor Panchayat.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, 17th October 1968

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Indian and Central Jharia Colliery, Post Office Jharia, District Dhanbad and their workmen, by its order No. 2/149/65-LRII dated 19th March, 1966 referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below :

SCHEDULE

"Whether the management was justified in refusing work to the workers of the Indian and Central Jharia Colliery with effect from the 30th September 1965? If not, to what relief are they entitled?"

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 58 of 1966 on its file. Workmen filed their statement of demands. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding

was transferred to this Tribunal, by the Central Government by its order No. 8/25/67-LRII dated 8th May, 1967. Consequently the reference is renumbered on the file of this Tribunal as reference No. 125 of 1967. Employers filed their statement of demands.

3. Parties filed a compromise memo stating that the dispute involved in the reference has been settled to the complete satisfaction of the parties. The compromise memo is duly verified. Having gone through the terms of compromise, I consider them as fair and reasonable and beneficial to the affected workmen. The compromise is, therefore, accepted and the award is made in terms of the compromise. The compromise memo is annexed herewith and is made part of the award. The award is submitted under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) N. VENKATA RAO,

Presiding Officer,
Central Government Industrial Tribunal (No. 2), Dhanbad.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

Reference No. 125 of 1967

BETWEEN

Management of Indian and Central Jharia Colliery, P. O. Jharia, District Dhanbad
and others

AND

Their Workmen represented by Koyla Mazdoor Panchayat P. O. Jharia, Dist. Dhanbad
Short Recital of the Case

The management of Indian and Central Jharia Colliery, merged with South Golakdih Colliery of South Golakdih Coal Coy stopped working in their Indian and Central Jharia Collieries with effect from 30th September 1965. The Government of India by their Notification No. 2/149/65-LRII dated 19th March 1966 referred the following dispute to the Central Government Industrial Tribunal at Dhanbad for adjudication under sub section (1) of section 10 of the Industrial Disputes Act 1947.

Whether the management was justified in refusing work to the workers of the Indian and Central Jharia colliery with effect from 30th September 1965: If not, to what relief are they entitled?

Pending adjudication of this dispute the management restarted working of the colliery with effect from 9th July 1966. The management entered into an agreement with Koyla Mazdoor Panchayat on 25th Day of June 1966, which is enclosed here with and forms part of this agreement, marked as Annexure A.

Now in the interest of Industrial peace and to resolve this dispute the representative of the management and workmen represented by Koyla Mazdoor Panchayat have entered into further agreement and have settled the dispute on the following terms.

Terms of Settlement

1. All the workmen numbering 267 who were on the rolls of the colliery at the time of the closure of Indian and Central Jharia Collieries will be paid 40 per cent of their total wages including Bonus as if they were all on duty for the period 30th September 1965 to 8th July 1966.
2. The above payment shall be made to all workmen whether still under employment or have not been allowed to join or have been retrenched.
3. Continuity and conditions of service of workmen employed in the collieries in accordance to the agreement, referred to in the preamble, which is Annexure A to this settlement shall not be adversely affected.
4. With this settlement grievances of 267 workmen for relief for the period 30th September 1965 to 8th July 1966 is resolved and settled.
5. The above payment shall be made to the workmen within three months from the date of the Award by the Tribunal.
6. The parties shall bear their own costs to this dispute.

(Sd.) P. C. SHARMA,

Superintendent of Collieries, South Golakdih Coal Coy

(Sd.) H. N. SANGH,

Vice President,
Koyla Mazdoor Panchayat Jharia, Dhanbad.

Dated the 6th August, 1968.

ANNEXURE 'A'

Sri A. N. Sharma, Colliery Superintendent for South Golakdih Colliery for the employers' Jharia, Bihar.

Sri R. S. Singh, Secretary, Koyla Mazdoor Panchayat for the workmen; Jharia, Bihar.

The Indian and Central Jharia Colliery was merged with the South Golakdih Colliery of M/S South Golakdih Coal Coy. The Indian and Central Jharia colliery whose working was suspended and from September, 20th 1965, has now resumed operation. It is, therefore agreed by and between M/S South Golakdih coal company and the Koyla Mazdoor Panchayat representing the workmen of the company as under:

Terms of Settlement

1. The company shall retain in employment all the workmen of Indian and Central Jharia Colliery for employment is available in the company by the 9th July 1966.
2. Those workmen whom the company is unable to retain in employment by the 9th July 1966 shall be retrenched and they shall be paid retrenchment compensation according to the Industrial Disputes Act, 1947.
3. The workmen who are retrenched as per clause 2 above shall be paid their retrenchment compensation as well as their earned dues accrued to them till the suspension of working of the Indian and Central Jharia Colliery on or before the 25th July, 1966.
4. The workmen whom the company retains in employment by the 9th July, 1966 shall be paid their earned dues accrued to them till the suspension of the working of the Indian and Central Jharia Colliery on or before the 30th September, 1966.
5. The Company and the Koyla Mazdoor Panchayat shall Co-operate with one another in ensuring the smooth running of the company's colliery and shall resolve all disputes by recourse to negotiation, conciliation and arbitration.

Sd./- R. S. SINGH, Secretary,
For Kayla Mazdoor Panchayat.

Sd./- A. N. SHARMA, Superintendent,
For South Golakdih Coal Company.

JHARIA,

This 25th day of June, 1966.

[No. 2/149/65-LRII.]

S.O. 4069.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal (No. 2), Dhanbad, in the industrial dispute between the employers in relation to the Dhansar Colliery, Post Office Dhansar, District Dhanbad and their workmen, which was received by the Central Government on the 26th October, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

Shri Nandagiri Venkata Rao, Presiding Officer

REFERENCE No. 118 OF 1967

In the matter of an industrial dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947.

PARTIES:

Employers in relation to the Dhansar Colliery, Post Office Dhansar, District Dhanbad

AND

Thir workmen

APPEARANCES:

For the employers: Shri S. S. Mukherjee, Advocate.

For the workmen: Shri Prasanta Burman, Secretary, Khan Mazdoor Congress.

STATE: Bihar,

INDUSTRY: Coal.

Dhanbad, 16th October, 1968

AWARD

The Central Government, being of opinion that an industrial dispute exists between the employers in relation to the Dhansar Colliery, Post Office Dhansar, District Dhanbad and their workmen, by its order No. 2/141/65-LRII dated 3rd March, 1966, referred to the Central Government Industrial Tribunal, Dhanbad under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication the dispute in respect of the matters specified in the schedule annexed thereto. The schedule is extracted below:

SCHEDULE

"Whether the action of the management of the Dhansar Colliery in transferring the services of the following seventeen miners from No. 4 incline to No. 2 Pit with effect from the 7th June 1965 was with a view to victimise the workmen and, if so, to what relief are the workmen entitled?"

1. Swaminath Bhar.
2. Sahdeo Shahu.
3. Bibhikhan Shahu.
4. Jamir Khan.
5. Rajnath Shahu.
6. Janki Das.
7. Barhoo Das.
8. Ram Sahay Bhuiya.
9. Rama Shankar Dusadh.
10. Manki Das.
11. Baradan B. P.
12. Hadish Mian.
13. Sheo Prasad Koiri.
14. Deoki Shao.
15. Ram Prit Shao.
16. Chutar Mahato.
17. Fosan Mahato."

2. The Central Government Industrial Tribunal, Dhanbad registered the reference as reference No. 41 of 1966 on its file. Employers as well as workmen filed their statement of demands. While it was pending before the Central Government Industrial Tribunal, Dhanbad, the proceeding was transferred to this Tribunal, by the Central Government by its order No. 8/25/67-LRII dated 8th May, 1967. Consequently, the reference is renumbered on the file of this Tribunal as reference No. 118 of 1967.

3 It is not in dispute that all the 17 workmen referred to in the reference (hereinafter referred to as the affected workmen) were pick miners and they were transferred from No. 4 incline to No. 2 Pit in Dhansar colliery by the employers with effect from 7th June, 1965. The case of the workmen is that they were originally members of the Colliery Mazdoor Sangh and on their becoming members of the Congress Mazdoor Sangh the Manager of the colliery called them to his office and asked them to cease to be members of the Congress Mazdoor Sangh, that on the refusal of the affected workmen to cease to be members of the Congress Mazdoor Sangh the Manager, in presence of two others threatened the affected workmen that he would dismiss, discharge, stop and harass them by transferring their services and that the affected workmen were transferred accordingly to No. 2 Pit. According to them only such of the workmen were transferred to No. 2 Pit who were members of the Congress Mazdoor Sangh. In the statement filed by them the workmen have stated that the case of the affected workman, Shri Janki Das (Sl. No. 6 in the schedule of reference) should be treated as dropped as no dispute exists any more as regards his transfer. The employers filed their statement taking several objections. At the outset the objection taken by them is that the Congress Mazdoor Sangh is neither the representative nor recognised union of the colliery. On merits they stated that the transfer of the affected workmen was in the ordinary course of business on account of shrinkage of working faces in No. 4 incline and that there was no element of victimisation in the transfer. They pleaded that they had transferred 55 miners from No. 4 incline to No. 2 Pit as agreed to by the Colliery Mazdoor Sangh on 1st June, 1965 and that the transfer was without affecting the wages and other conditions of service of the workmen in any way. The workmen were represented by Shri Prasanta Burman, Secretary, Khan Mazdoor Congress and the employers by Shri S. S. Mukherjee, Executive Member of the Indian Colliery Owners' Association. On admission by the workmen Exts. M1(a) to M1(c) and by consent of the employers Ext. W1 were marked. On behalf of the workmen 3 witnesses were examined and Exts. W2 to W9 were marked. The employers examined a witness and marked Exts. M2 to M6.

4. The affected workmen being Pick miners in the Dhansar Colliery of the employers and their having been transferred from No. 4 incline to No. 2 Pit being admitted facts, the only point falling for consideration is whether the transfer was with a view to victimise the affected workmen. In terms of the reference the onus was lying on the workmen to prove by clinching evidence that the transfer of the affected workmen was with a view to victimise them. In the statement filed by them the workmen had stated that the affected workmen were originally members of the Colliery Mazdoor Sangh and the employers were displeased and victimised them by transferring them to No. 2 Pit when they became members of the Congress Mazdoor Sangh. WW1 is the affected workman mentioned at Sl. No. 15 of the schedule to the reference. He says that all the affected workmen were members of the union of Shri Chaturanand Jha and before the disputed transfer they became members of the union of Shri S. K. Rai on 1st January, 1965. At a later stage he says that Shri Chaturanand Jha was representing the Colliery Mazdoor Sangh. Shri Prasanta Burman, Secretary, Khan Mazdoor Congress, WW3 says that the affected workmen were members of the Congress Mazdoor Sangh in 1965 and that in the year 1965 Shri S. K. Rai was an office bearer of the Congress Mazdoor Sangh. Therefore, it emerges that the union of Shri S. K. Rai of which all the 17 affected workmen became members on 1st January, 1965 was the Congress Mazdoor Sangh. But the fact that the affected workmen were previously members of the Colliery Mazdoor Sangh and from 1st January, 1965 became members of the Congress Mazdoor Sangh is not by itself enough to establish the motive of victimisation of the affected workmen on the part of the employers. Workmen of a colliery are at liberty to join any union of their choice whenever they choose. In the statement the workmen had pleaded that the Manager of the colliery called the workmen to his office, asked them to cease being members of the Congress Mazdoor Sangh and threatened that he would dismiss, discharge, stop and harass them by transferring their services: WW1 deposed that the Manager had told the workmen that they were transferred to No. 2 Pit because they had become members of the Congress Mazdoor Sangh. But, as admitted by him, no written complaint was submitted to any one in this regard. According to the statement of the workmen the threat was administered before the transfer order was passed but according to WW1 it was after the transfer. The transfer notice is Ext. M2 and it is dated 1st June, 1965. According to WW1 a letter was submitted to the Manager on 8th June, 1965 and its office copy is Ext. W3 and Ext. W4 is the office copy of a letter addressed to the Secretary, Congress Mazdoor Sangh on 7th June, 1965. In neither of them is there any reference to the threats alleged to have been administered by the Manager. In Ext. W3 it is stated that the workmen did not know why they were transferred. In Ext. W4 it is mentioned that the transfer was due to the workmen having become members of the Congress Mazdoor Sangh. Obviously, it was a suspicion on the part of the workmen. The evidence of WW2 does not refer to the threat attributed to the Manager. The evidence of WW3 has no bearing on the point. It was stated in the statement of the workmen that the Manager had threatened the affected workmen in presence of two persons whose affidavits were enclosed with the statement. They were S/Shri Brijlal and Baraham Dev Saw. Neither of them is examined before the Tribunal nor were the employers given opportunity to cross examine them. Against the statement WW1 says that the Manager administered the threat in presence of Shri Bhagavat Tripathi. Shri Bhagavat Tripathi also is not examined. WW1 also says that in addition to the 17 affected workmen 16 other pick miners were also transferred from No. 4 incline to No. 2 Pit and that they were members of the Khan Mazdoor Congress. He further says that 21 pick miners who were transferred to No. 2 Pit were members of the Colliery Mazdoor Sangh of Shri Chaturanand Jha. It follows from the evidence of WW1 that not only pick miners who were members of the Congress Mazdoor Sangh but members of Khan Mazdoor Congress and the Colliery Mazdoor Sangh were also transferred to No. 2 Pit along with the affected workmen. This evidence disproves the allegation made in the statement of the workmen that the employers transferred only the members of the Congress Mazdoor Sangh which was a rival union to the Colliery Mazdoor Sangh. On this evidence I do not find any substance that the transfer of the affected workmen was with a view to victimise them for their becoming members of the Congress Mazdoor Sangh.

5. In the matters of representation of the dispute before this Tribunal also the employers raised an objection. According to the order of reference the Congress Mazdoor Sangh was to represent the workmen. The failure report of the Assistant Labour Commissioner (Central), Dhanbad-II dated 9th December, 1965 also shows that the Secretary, Congress Mazdoor Sangh had represented before him the case of the 17 affected workmen. But the statement of demands filed in the case was not signed by the Congress Mazdoor Sangh but it was verified and signed by the affected workmen individually. While, according to the order of reference there were 17 affected workmen the statement of demands is signed only by 13 of the affected workmen. At an earlier stage of the case Sarvashri S. S. Kapur and B. N. Singh, Advocates appeared for the workmen and they were authorised only by 6 of the affected workmen. According to the statement of demands

filed on behalf of the workmen, the affected workman, Shri Janki Das mentioned at Sl. No. 6 in the schedule of reference has no more dispute for adjudication. Ultimately Shri Prasanta Burman filed his authority and appeared for the workmen. Shri Prasanta Burman is Secretary, Khan Mazdoor Congress and is examined for the workmen as WW3. He has conceded that he is authorised only by 6 of the affected workmen. He has further pointed out that the 6 workmen authorising him are not members of any trade union from 1967. Thus, there is no representation before this Tribunal in respect of the remaining 11 affected workmen. This legal flaw apart, I do not find any substance in the case set up by the workmen on the merits.

6 I, therefore, hold that the action of the management of the Dhansar Colliery in transferring the services of the 17 affected workmen from No. 4 Incline to No. 2 Pit with effect from the 7th June, 1965 was not to victimise the workmen and, as such, none of them is entitled to any relief. The award is made accordingly and submitted under Section 15 of the Industrial Disputes Act, 1947.

(Sd.) N. VENKATA RAO,

Presiding Officer,

Central Government Industrial Tribunal (No. 2) Dhanbad.

[No. 2/141/65-LRII.]

New Delhi, the 8th November 1968

S.O. 4070.—In pursuance of section 17 of the Industrial Disputes Act, 1967 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the Kalichhappar Colliery of Messrs C. P. Syndicate, Post Office Parasia, District Chhindwara and their workmen, which was received by the Central Government on the 26th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Dated the September 24, 1968

PRESENT:

Sri G. C. Agaiwal, Presiding Officer.

CASE RIF NO. CGIT/LC(R) (131) OF 1967

PARTIES:

Employers in relation to the Kalichhappar Colliery of Messrs C. P. Syndicate, Post Office, Parasea, District Chhindwara (M.P.)

Vs.

Its workmen represented through M. P. Mine Workers' Union, Chitnwis Ganj, Chhindwara (M. P.)

APPEARANCES:

For employers—Sri M. M. Giradkar, Authorised Representative.

For workmen—Sri R. K. Haldulkar, President, M. P. Mine Workers' Union.

INDUSTRY: Coal Mine.

DISTRICT: Chhindwara (M.P.)

AWARD

By Government Notification No. 5/34/67-LRII dated 21st September, 1967, the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this Tribunal for adjudication:—

Matter of Dispute

Whether the management of Kalichhappar Colliery of Messrs. C. P. Syndicate, Post Office Parasia, District Chhindwara (Madhya Pradesh) was justified in dismissing S/Shri Behari son of Bhura and Paranya son of Jeejya, magazine chowkidars from service with effect from the 8th October, 1966? If not, to what relief are the workmen entitled?

2. Both the concerned workmen, Behari and Paranya, were at material time working as Shift Magazine Chowkidars, the third chowkidar in the shift having been one Lala.

Out of these two, Bihari was, however, recorded as Mazdoor but it is not denied that he was working as Chowkidar. There is a magazine office in charge of one Sri Mehta and the magazine godown from where explosives are issued is at some distance from the office. The chowkidar have to remain at office but have also to go and issue explosives from the magazine godown. Two muzzle loading guns belonging to the colliery which used to be kept in the magazine office were found missing by Sri Mehta at about 3 p.m. on 11th April, 1966, which was Monday. The shift duty of Bihari had ended and Paranya had taken over at about 2 p.m. Both the chowkidars were interrogated and on their inability to account for the loss, a report in police was lodged by the manager on the same date (Ex. E/1) after the fact was brought to the notice of the manager by the clerk incharge, Sri Mehta. It appears that the police investigated the matter and finding no proof did not proceed further. The guns, however, were found after some time under a tree and presumably for this reason also no further interest was taken by the police.

3. Both Bihari and Paranya were charge-sheeted on 27th July, 1966. They submitted their explanation which was found to be unsatisfactory. Sri I. J. Handa, the then Labour Welfare Officer held a departmental enquiry and on his finding dated 19th September, 1966 (Ex. E/9) both the chowkidars were dismissed on 8th October, 1966. The Union, M. P. Mine Workers Union, took up the dispute, which in due course resulted in this reference. It was alleged on behalf of the workmen that the two concerned workers were not at all negligent and the clerk incharge, Sri Mehta, is alone responsible for the loss. There was no regular bonafide enquiry conforming to principles of natural justice. The management disputed the fact and further alleged that these workers were not members of the Union at the relevant time and the Union was not competent to raise a dispute so as to make it an industrial dispute. On the pleadings of the parties, the following additional issues were framed in the case:—

Additional Issues

1. Whether both the workmen concerned were members of the Union and the Union was competent to sponsor the dispute. Is the dispute not an industrial dispute?
2. Whether both the workmen were dismissed after a bonafide and proper enquiry in accordance with the provision of Standing Orders and principles of natural justice?
3. Were both the concerned workmen guilty of the misconduct for which they had been dismissed?

Findings

Issue No. 1.—The question of espousal by a union has lost importance by Sec. 2A I. D. Act. When a dispute relates to termination of service it shall be deemed to be an industrial dispute even though the other workmen be not parties to the dispute. Even so, necessary evidence had been given to prove that the two concerned workmen became members of the Union before they were charge-sheeted. Counterfoil receipts of both the workers (Ex. W/1 and W/3) have been filed to show that they paid subscription and became members on 11th June, 1966. The extract of Membership Register (Ex. W/2) confirms the fact. There is an espousal resolution in the meeting of the Union dated 21st August, 1966 (copy of which is Ex. W/4). After the workers were dismissed the Union addressed an appeal to the Managing Director on 19th October, 1966 (Ex. W/7) in which it was stated that the workers were members of the Union. In reply (Ex. W/6) the management did not dispute the fact. Both the workers in their evidence have stated that they had been members of this Union for quite a long time. It must, therefore, be held that they were members of the Union and the Union was competent to espouse. The dispute was an industrial dispute.

Issue No. 2.—The enquiry in the case bristles with a number of loopholes and which are so blatant as to lead to the inference that it was an empty formality. In the first place, the charge-sheet against the workers was that two guns had been stolen during their duty hours which the result of their negligence. The charge therefore was of negligence resulting in theft and not for failure on their part to inform the clerk incharge, Sri Mehta. There was no evidence during the enquiry nor in the finding itself how the guns were stolen due to the negligence of one or both and during their duty hours. All that transpired in the evidence was that there was no chowkidar on the preceding date which was Sunday and that Bihari came at about 7 A.M. when a number of short-fixers were sitting, that he obtained the key from Sri Mehta, the clerk incharge, opened the office and then went to the godown to issue explosives. Sri Mehta came later on and remained in office till about 12 Noon. When Bihari handed over charge to Paranya, the latter enquired about the guns and Bihari told him that they might have been given by Sri Mehta to someone. It was only at about 3.30 p.m. when Sri Mehta called Bihari again that the fact of guns being found missing without the knowledge of Sri Mehta was detected. There was no suggestion in the evidence or by the management itself that

that the guns were lost due to their negligence. The only charge which was built up against both was that they failed to inform Sri Mehta before Sri Mehta himself detected the loss and questioned them. This was, however, not the charge and the finding was different than the charge itself.

The most extraordinary procedure was adopted by the Enquiry Officer. His finding (Ex. E/9) and the record of enquiry proceedings (Ex. E/13) would show that during the evidence it transpired that one Ram Prasad, Coal Cutter, had been found to be sitting in the magazine office for no specific purpose. The Enquiry Officer called Ram Prasad and started an enquiry against him examining a number of witnesses. The enquiry became a roving one and was more directed against Ram Prasad than the two chowkidars. The finding also was that the story narrated by Ram Prasad was found false by the evidence. Against the two chowkidars, the finding was that they had failed to inform Sri Mehta. This the chowkidars had admitted and explained. The further finding that these chowkidars used to leave magazine office unlocked when they went to issue explosive was more of a surmise than borne out by the evidence. The chowkidars had to perform the dual function of attending at magazine office and also to issue explosives from the magazine godown. They could not possibly locked the office when persons were sitting in office and when Sri Mehta had mostly to be there. The guns had to be under his care rather the chowkidars.

In the finding the Enquiry Officer has not specifically stated the evidence how the two chowkidars have been found to be guilty of negligence. As adverted to earlier, there was no precise evidence how the guns disappeared before the theft was detected. The Enquiry Officer conducted the enquiry under the Model Standing Orders as stated by him but in his finding he recorded that the misconduct was proved under Sec. 20(6) of Standing Orders of the Colliery and under Sec. 18(f) of Model Standing Orders of the Mining Industry. He took up the alternative stand because as stated by him he was not sure if the Standing Orders of the Colliery had been certified or not by them. If he had cared to look into relevant clauses of both Standing Orders viz., Standing Orders and Model Standing Orders, he would have found that they referred to habitual neglect or negligence. There is no charge of habitual neglect or negligence on the workers. These clauses therefore were not at all attracted. The finding was different. It was not supported by evidence and therefore suffers from perversity. The procedure of enquiry was greatly defective as a third person, Ram Prasad, was introduced and the whole enquiry was directed against him. The relevant clauses of the Standing Orders were inapplicable. For all these reasons it must be held that the enquiry was wholly defective and stands vitiated.

Issue No. 3.—Except for producing the Enquiry Officer, the management did not choose to lead any evidence on the misconduct for which they had been punished. As adverted to earlier the charge was that due to their negligence there had been theft of guns. The action, however, is sought to be justified on the ground that the chowkidars failed to report the fact to the clerk incharge, Sri Mehta, before he himself detected the theft. If the workers had to be punished for this reason they should have been charge-sheeted differently for failure to report to Sri Mehta. Consequently, this failure on their part cannot be availed of by the management. Apart from this, both the workers came in evidence and explained the omission. They further stated that the key of the office and the magazine godown remained with Sri Mehta and that whenever they went to magazine store they kept the office locked. With no controverting evidence on behalf of the management, there is no reason to doubt their testimony which is made trustworthy by the attendant circumstances. When the key remained with Sri Mehta it is possible that the guns may have been stolen on the previous day which was a Sunday when chowkidars were not on duty. In any case, Paranya could not be made responsible when the guns had been missing during the shift of Bihari. To dismiss both when the loss had taken place admittedly not in the shift of Paranya was arbitrary and wholly unjustified. When the only blame which is sought to be attached to the conduct of the two workmen was that they failed to report about the loss of the guns to Sri Mehta on the working day and when Sri Mehta himself had been working and sitting in the office during day time and there was no suggestion that they or any of them had any hand or complicity in the loss, the punishment of dismissal against both was unconscionable and disproportionate to the fault assuming that there was any blame attached to this omission. It must therefore be held that the two workers concerned were not guilty of the misconduct for which they have been punished.

Decision

The result is that the management was not justified in dismissing S/Sri Bihari and Paranya with effect from 8th October, 1966. They have to be reinstated and will be

entitled to back with attendant benefits. The Union will further be entitled to Rs. 100/- as costs of proceedings from the management.

(Sd.) G. C. AGARWALA,
Presiding Officer,

[No. 5/34/67-LRII.]

S.O. 4071.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Parbelia Colliery of Messrs Bengal Coal Company Limited, Post Office Disergarh, District Burdwan and their workmen, which was received by the Central Government on the 29th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE NO. 18 OF 1968

PARTIES :

Employers in relation to the Parbelia Colliery of Messrs Bengal Coal Company Limited,

AND

Their workmen.

PRESENT :

Shri B. N. Banerjee

.. Presiding Officer.

APPEARANCES :

On behalf of Employers—Shri D. Narsingh, Advocate.

On behalf of Workmen—Shri D. L. Sen Gupta, Advocate.

STATE : West Bengal

INDUSTRY : Coal Mines.

AWARD

By Order No. 6/17/68-LRII, dated April 16, 1968, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following dispute between the employers in relation to Parbelia Colliery of Messrs Bengal Coal Company Limited and their workmen, to this tribunal, for adjudication, namely :

"Whether the dismissals of Shri Ajodhya Thakur, Fan Khalasi and Shri Dhaneswar Nunia, Wagon Shunter by the Management of Parbelia Colliery with effect from the 12th April, 1967 and 22nd April, 1967 respectively, were justified? If not, to what relief are the workmen entitled?"

2. The cause of the workmen was espoused by a trade union, known as the Colliery Mazdoor Union, which filed a written statement. The management also filed a written statement. Both the trade union and the employer company took the liberty of filing supplementary statements or rejoinders.

3. Before I go into the respective pleadings, I need set out the charges on which the two workmen were dismissed. The chargesheet against Ajodhya Thakur, Fan Khalasi, reads :

"On 18th March, 1967 at about 11 P.M. you, along with Dhaneswar Nunia, Wagon shunter, entered into the courtyard by scaling over the wall into the quarter of Shri R. L. Mahto, Foreman Trainee. There was a row made by Mangal Rana and Jagdish Ram who live in adjacent quarters. Shri R. L. Mahto got up from sleep and came out of his room. He saw two persons in the courtyard and caught hold of Dhaneswar Nunia after struggle but you escaped by scaling over the wall. You were identified by Sri R. L. Mahto. After that some neighbours namely Swaran Singh, Mahadeo Roy and others came to the spot on hearing row. Dhaneswar Nunia on being questioned confessed his guilt and told your name as his associate. The matter was reported to the Welfare Officer and as instructed Dhaneswar was handed over to the Police.

You are therefore charged under Standing Orders Section 27 clause (2), (19) and (20)."

The charge against Dhaneswar Nunia was couched in almost identical language with necessary variations. That charge also is set out below :

"On 18th March, 1967 at about 11 P.M. you along with Ajodhya Thakur, fan khalasi, entered into the courtyard by scaling over the wall of the quarter of Sri R. L. Mahto, Firemen trainee. There was a row made by Mangal Rana and Jagdish Ram who live in adjacent quarters. Shri R. L. Mahto got up from sleep and came out of his room. He saw two persons in the courtyard, caught hold of you after struggle but the other escaped by scaling over the wall. After that some neighbours namely Swaran Singh, Mahadeo Ray and others came to the spot on hearing row. You confessed your guilt and confessed that Ajodhya Thakur was your associate. The matter was reported to the Welfare Officer and as instructed you were handed over to the Police.

You are therefore charged under Standing order Section 27 clause (2), (19) and (20)."

4. The provisions of the Standing order, to which reference was made in the two chargesheets, are herein-below quoted :

"27(2). Theft, fraud or dishonesty in connection with company's business or property.

27(19) Any breach of the Indian Mines Act, or any other Act, or of any rules or bye-laws thereunder, or of Standing Orders.

27(20) Abetment of, or attempt at abetment of any of the above acts of misconduct."

Both the workmen showed cause to the charges levelled against them. Ajodhya Thakur denied that he had entered into the quarters of R. L. Mahto with Dhaneswar Nunia. He further stated that it was untrue that he was identified by R. L. Mahto. He gave two reasons why Dhaneswar Nunia implicated him, namely :

"(i) That he was severely beaten and as such he took my name as I had long-standing enmity with him. Dhaneswar Nunia lives just by the side of my quarter and deals with liquor. There is assemblage of Badmashes in his quarter. To stop this nuisance I requested Welfare Officer and Union Leaders many times to remove Dhaneswar Nunia from that quarter. It is for that reason he falsely implicated me.

(ii) Secondly on 12th March, 1967 at 6 P.M. Dhaneswar Nunia complained against me before Sri Tripathi, Union Leader and told that I threatened to slap him. I do not know what action Sri Tripathi took. On that very day in the market Dhaneswar Nunia made the same complaint to Bholanath and Marai Mahato."

The cause shown by Dhaneswar Nunia was as follows :

Rambilash Singh, Mining Sirdar is related to me. I have been staying with him for last one week. On 18th March, 1967 I drank wine and was in a drunken state. I entered into the quarter of Sri R. L. Mahto by mistake taking it to be quarter of my relation Rambilash. Before entering the quarter I shouted but there was no response. I was convinced that it was my relation's quarter. I was caught by making hulla 'Chor, Chor'. There was none with me. I was badly assaulted and the people asked me as to who was with me and out of fear I took the name of Ajodhya Thakur.**

5. In the written statement filed by the Mazdoor Union, on behalf of the workmen, it was stated that Ajodhya Thakur was "a man of one hand only" and it was impossible for him to scale the wall and enter into Mahato's quarters. It was further stated in the written statement that there was little material evidence against Thakur and his dismissal was unjustified. The findings of the domestic enquiry were characterised as perverse. So far as Dhaneswar Nunia was concerned, it was not denied that he had entered into the quarters of R. L. Mahto but the reason given was that he was drunk and entered the quarters under some sort of confusion and not with any criminal intention. It was lastly pleaded that both the workmen had been criminally prosecuted under Section 54/109 of the Code of Criminal Procedure but were discharged. The dismissal of Dhaneswar Nunia was also characterised as unjustified.

6. In the written statement filed by the management, the physical disability of Ajodhya Thakur was not denied. But it was stated that the compound wall was only 5' feet in height and there was a heap of coal, about 3 feet in height, stacked in the courtyard against the compound wall, and as such it was possible, even for an one handed person to

scale the wall. It was further stated that Ajodhya was identified by R. L. Mahto while he was scaling. It was also established at the enquiry, that Ajodhya had accompanied Dhaneswar Nunia on the day of occurrence. He was therefore found guilty of the charge at the domestic enquiry. So far as Dhaneswar Mahto was concerned, it was pleaded, that he was not found to be drunk and because he was caught red-handed inside the courtyard and his unauthorised entry was established by evidence, he was found guilty of the charge at the domestic enquiry.

7. There was a supplementary statement filed on behalf of the Colliery Mazdoor Union wherein the height of the wall is stated to be 5½' and not 5'. The other allegations contained in the said supplementary statement are not material. It is in the background of the pleading as summarised above, I have to consider the dispute referred to this tribunal.

8. There was one witness examined on behalf of the trade union. He was L. P. Tripathi, the Secretary of the local branch of the Colliery Mazdoor Union. He disputed in his evidence that the workmen concerned were dismissed really for any misconduct but said that they were wrongfully dismissed. The employer company did not want to examine any witness. I, however, found Mr. Kabi, the Enquiring Officer, present in Court and examined him as a Court witness to clarify certain points.

9. I need to remind myself, at this stage, that sitting as an industrial tribunal I do not exercise appellate jurisdiction over domestic enquiry. It is not open to me to substitute my own judgment for that of the management. I can interfere only in the following circumstances :

- (1) When there is want of good faith;
- (2) When there is victimisation or unfair labour practice;
- (3) When the management has been guilty of basic error or violation of principles of natural justice; and
- (4) When on the materials the finding is baseless or perverse.

The above principles was laid down by the Supreme Court in *Indian Iron and Steel Co. Ltd. v Their workmen*, (1958) 1 LLJ 260 and have ever since been followed by the Supreme Court. In this limited jurisdiction I have to see how far the action of the management was justified.

10. The allegation against the workmen, in the chargesheets and in the pleadings, do not go to the extent that they were guilty of theft, fraud or dishonesty in connection with the company's business or property within the meaning of Section 27(2) of the Standing Order. Nor, do the allegations show that they were guilty of breach of Indian Mines Act or any other Act or any other Rules or bye-laws thereunder made, as contemplated by Section 27(19) of the Standing Order. Nor do the allegations go to show that they were guilty of abetment of anyone of the above acts of misconduct within the meaning of Section 27(20) of the Standing Order.

11. Mr. Narsingh, learned Advocate for the employer company, submitted that Section 27(19) contemplated breach of the provisions of Standing Orders as well and the conduct of the workmen would attract the mischief of Section 27(5) of the Standing Order, which reads :

"Drunkenness, fighting, riotous and disorderly or indecent behaviour."

In my opinion, if the workmen were sought to be charged for drunkenness, fighting riotous or disorderly or indecent behaviour, they might easily be charged specifically under Section 27(5) of the Standing Order. They were not, however, specifically charged with such misconduct. To try to spell out a charge under Section 27(5) from what is contained under Section 27(19) may not be unimaginable but so to do has the peril of making the charge vague and also un-understandable. It may not be understood whether it was the intention of the management to charge the workmen for the misconduct of drunkenness or for any other misconduct contemplated under Section 27(5). The rule of natural justice requires that a person must be charged with specific misconduct and he must be given proper opportunity to show cause against that specific misconduct. Against the misconduct of drunkenness, I do not think the workmen concerned were given any opportunity to show cause and the enquiry also did not proceed on that basis. I do not, therefore, make much of this argument.

12. Mr. D. L. Sen Gupta, learned Advocate, appearing for the union, contended that the Security Officer of the employer company Mr. Kabi, who conducted the domestic enquiry violated several principles of natural justice in the conduct of the enquiry. He was, it was submitted, wrong in visiting the place of the incident, without notice to the workmen, and was further wrong in incorporating the personal impressions gathered by

him in such visit in the enquiry report. The passage on which he relied was an extract in the report against Ajodhya Thakur (collectively marked Ext. A). The passage reads:

"I visited the spot. The compound wall of the quarter of R. L. Mahto is about 5 ft. high. Back door was kept locked up. There is a heap of coal stacked against the wall in the courtyard about 2 ft. in height, but marks on the wall indicates that originally height was about 3 ft. There are 6 blocks in the row, Sri Mahto lives in 11 block. The witnesses live in other blocks. P.W. Jagdish Ram and Mangal Rana live just behind. There are lights fixed outside the verandah walls facing courtyard, one for two blocks. The place is well lighted. Delinquent Ajodhya Thakur and Dhaneswar live in Amdanga quarters about a mile from the spot. Sri Mahto lives with his wife only."

The report against Dhaneswar Nunia (collectively marked Ext. A) reads:

"I have discussed the evidences fully in the enquiry report of the chargesheet issued against Sri Ajodhya Thakur. Both the chargesheets are for the misconduct of the same transaction. This report may be taken into account."

Mr. Sen Gupta submitted that the mischief of the personal visit, which coloured the report against Ajodhya Thakur, also coloured the report against Dhaneswar Nunia. In my opinion, there is substance in this submission. The law of natural justice requires that persons charged must have opportunity of rebutting every piece of evidence. It appears that, from his personal visit, Mr. Kabi collected a good deal of material impressions. Given an opportunity, the workmen might have disproved some or all of them. Deprived of that opportunity, they had to succumb to the personal impressions *ex-parte* gathered by Mr. Kabi and this was denial of natural justice to the workmen concerned.

13. The next defect in procedure pointed out by Mr. Sen Gupta was that the workmen examined a witness of the name Bholanath. I find his evidence on the record (collectively marked Ext. A) of the enquiry proceedings. At the end of his evidence there is the following endorsement recorded:

"The witness refused to sign on the statement and told that he will give in writing in Hindi."

The evidence was taken down by Mr. Kabi himself. Unfortunately in his enquiry report against Ajodhya he made the following observation:

"DW Bholanath, whose name was given in the explanation appeared but refused to make any statement. He left the place of enquiry saying that he would give a written statement but did not do it though called for."

This is somewhat a strange passage. If a witness refused to sign his deposition, that fact may be noted. The correctness of the deposition may be challenged by the witness himself. Here the witness does not challenge his own deposition. How his deposition was left out of account, merely because the witness wanted to submit a statement, is not understandable. I think that by keeping out of consideration Bholanath's evidence law of natural justice was again violated.

14. Apart from what I have stated, it appears from Ext. 1 and the evidence of Mr. Kabi himself, that on the complaint of R. L. Mahto, Ajodhya and Dhaneswar were both prosecuted under Section 54/109 Cr. P. C. Both of them were discharged by Sub-divisional Magistrate, Purulia, under an order dated September 25, 1967. The order of discharge reads:

"O.P. is present. No witness. In absence of evidence no order can be passed directing O. Ps. to execute bond. They are discharged."

The order in a criminal court is not *rejudicata* before a domestic enquiry. But it is significant that R. L. Mahto could not produce any evidence against the alleged misconduct of the two workmen. Further, the case against Ajodhya is worse. He is a man suffering from physical disability having but one hand. He was not caught. He is said to have been identified by R. L. Mahto and implicated by Dhaneswar. Too much appears to have been made of a confession of a co-accused, who retracted his confession at the first opportunity.

15. Lastly, I find that the enquiry officer imported his own imagination into the enquiry report. He was confronted with the following passage in the enquiry report against Dhaneswar Nunia:

"The backdoor of the courtyard was locked up from inside and the front doors were bolted from inside. As such the delinquent had to scale over the wall to enter the courtyard."

He was asked about the evidence on which the bolting of the front door was based. He said that was his inference from what was stated by Jagdish Ram and Mongal Rana. In my opinion, the inference was too readily made.

16. Thus, I find that the enquiry was not properly conducted. The rules of natural justice were violated. The Enquiring Officer proceeded on inference not properly drawn and personal impressions gathered at the back of the workmen concerned. That was perversity. He disregarded the evidence given on behalf of the delinquents without justification. The charges against the workmen were vague and not properly understandable. I therefore hold that the enquiry against the workmen was not properly conducted.

17. Before I close this judgement, I need notice one decision to which my attention was invited by Mr. Narsingh. Mr. Narsingh relied on the following passage in the Supreme Court decision in *Central India Coalfields Ltd., Calcutta and Ram Bilas Shobhnath* (1961) 1 LLJ 546 at page 548:

"Standing order 29(5) provides that drunkenness, fighting, riotous or disorderly or indecent behaviour constitutes misconduct which entails dismissal. Normally, the standing orders would apply to the behaviour on the premises where the workmen discharge their duties and during the hours of their work. It may also be conceded that if a quarrel takes place between workmen outside working hours and away from the coal premises that would be a private matter which may not fall within standing order 29(5); but, in the special circumstances of this case, it is clear that the incident took place in the quarters at a short distance from the coal-bearing area and the conduct of the respondent which is proved clearly amounts both to drunkenness as well as riotous, disorderly indecent behaviour. In fact, as the enquiry officer in substance has found, unless the appellant took some action against the respondent, breach of peace was threatened and that is not a matter which the appellant could consider with complacency."

He also invited my attention to the passage of Mr. Kabi's evidence where he stated, "The quarters are company's quarters allotted to workmen. The quarters are located about 200 yards away from the Pits." Mr. Narsingh submitted that the circumstances of the instant case were similar to the circumstances of the case before the Supreme Court and I need not interfere with the punishment imposed upon the workmen. I am not satisfied with this argument. Here the charge was different. Assuming for the same argument that it included the charge of drunkenness as well, the workmen were not charged with fighting, riotous or disorderly or indecent behaviour. It was not the allegation that they were menace to the peace of the colliery. In cases which are extreme, as the case before the Supreme Court, order of dismissal for drunkenness, etc. may be justified. The evidence does not bear out that the instant case is as bad as the case which was before the Supreme Court. Thus the Supreme Court's decision does not help Mr. Narsingh. In my opinion, however, the procedure adopted in the domestic enquiry violated natural justice and for that reason the findings of the domestic enquiry cannot be sustained and consequently the penalty imposed must also be set aside.

18. In the result, I hold that the dismissal of Shri Ajodhya Thakur, Fan Khalasi and Shri Dhaneswar Nunia, Wagon Shunter, by the management of Perbelia Colliery with effect from 12th April, 1965 and 22nd April 1965, respectively were not justified. The workmen are entitled to reinstatement. There is no evidence that they were sitting idle for the entire period during which they stood dismissed. I therefore, do not award back wages to them. This is my award.

19. This award is without prejudices to the employer company to start fresh proceedings against the workmen for the same misconduct.

(Sd./-) B. N. BANERJEE,
Presiding Officer;

Dated October 23, 1968.

[No. 6/17/68-LRII.]

S.O. 4072.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the Samla Dalurband Colliery. Post Office Pandaveshwar, District Burdwan and their workmen, which was received by the Central Government on the 29th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

REFERENCE NO. 21 OF 1968

PARTIES:

Employers in relation to the Samla Dalurband Colliery

AND

Their workmen.

PRESENT:

Shri B. N. Banerjee, Presiding Officer.

APPEARANCES:

On behalf of Employers.—Shri Prasanta Burman, Advocate.*On behalf of Workmen.*—Shri Parasu Ram Panda

STATE: West Bengal

INDUSTRY: Coal Mines.

AWARD

By Order No. 6/25/68-LRII dated April 6, 1968, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred the following dispute between the employers in relation to the Samla Dalurband Colliery and their workmen, to this tribunal, for adjudication, namely:

"Whether the management of Samla Dalurband Colliery Post Office Pandaveshwar, District Burdwan was justified in stopping Shri Dharmadas Ghosh, Mining Sirdar from work with effect from the 23rd December, 1966? If not, to what relief is the workman entitled?"

2. In this reference both the employer company and the trade union, which had espoused the cause of the workman concerned, took up a strange attitude. They did not file their written statements until the last moment before the hearing started. Both the parties filed their respective written statements and also their respective documents only when the hearing was about to start. I did not approve of their conduct but since neither party objected to the belated filing of the written statement and the documents I accepted the written statements and the documents filed at too late a stage.

3. West Bengal Khan Mazdoor Sangh, which espoused the cause of the workman concerned, stated in paragraphs 2 to 4 of the written statement:

"2. That the said management stopped the workman from his services on and from 22nd December, 1966 without any notice or chargesheet or whatsoever.

3. That the said workman had been working in the said colliery on and from 2nd January, 1964 without any misconduct whatsoever.

4. That the workman verbally approached the management to allow him to report for his duty but in vain."

4. In the written statement filed by the employer company it was pleaded that the workman had committed the misconduct of "negligence and wilful disobedience" and there was a chargesheet issued on December 23, 1966. It was further pleaded that the workman refused to accept the chargesheet and left the colliery and his job, after an altercation with the then manager. In paragraph 6 of the written statement, it was stated that a letter of warning was issued to the workman, on January 2, 1967, asking him to submit his explanation within three days failing which it would be presumed that he had joined work elsewhere. Later on, in paragraph 7 of the written statement, it was stated that the workman did not submit his explanation and never reported for duty in the colliery; he took away all his certificates from the colliery office and presumably joined another colliery. In paragraphs 8 and 9 of the written statement, it was stated that the workman made a complaint before the Labour Enforcement Office at Ukhra, in July 1967. He did not ask for re-employment but only wanted retrenchment compensation. The matter was, it was alleged, mutually settled in the office of the Labour Enforcement Officer, on October 27, 1967, and the employer agreed to pay all his dues. Pursuant to the agreement, it was further alleged, the employer sent all his dues by money order on December 5, 1967.

5. The chargesheet said to have been issued to the workman was sought to be proved by Sarat Chandra Dutta, the overman in-charge of the colliery concerned. The charge was couched in the following language (Ext. 1):

"You have in violation of the order given not to widen the main gallery connecting 9 pit, widened the same thereby endangering the life of workmen employed there.

Please show cause why disciplinary action may not be taken against you. You are also hereby suspended for 3 days. Your explanation must be received by me within the next 24 hours."

In his evidence, Sarat Chandra Dutta, the only witness examined on behalf of the employer company, did not exactly corroborate the language of the charge. He said in his evidence:

"He was entrusted with the supervision job when attempts were being made to connect Pit No. 8 with Pit No. 9. He did not properly supervise and therefore the connection had been made wider than was necessary."

Be that as it may, how this chargesheet was served upon the workman is not quite understandable. Sarat Chandra Dutta, in his evidence said, "chargesheet was issued but the workman did not receive the chargesheet. **Thereafter, the workman concerned did not attend work and I asked for substitute in his place. The workman concerned has his residential quarters in the colliery. He was not in his quarters. It was under lock and key." This witness further said in his evidence that, on January 2, 1967, the following letter (Ext. 2) was sent to the workman concerned:

"You were given charge sheet on 23rd December, 1966 which you refused to accept and left the colliery without intimation to any body. On going through the file it is found that you have not resubmitted the Mining Sirdar certificate which you took from the office on 15th January, 1966. If a satisfactory explanation is not received within 3 days it will be presumed that instead of meeting the charges made against you, you have joined duties elsewhere."

This witness also said in his evidence:

"(Shown letter dated January 2, 1967). Thereafter this letter was sent by post and a copy of this was also pasted on the Notice Board. I am not sure whether this was sent by Registered Post. This letter was sent to the address of his quarters in the colliery. I am not sure whether the letter came back. I did not keep myself informed about this."

6. Thus, on the evidence there is little proof that the chargesheet was served upon the workman concerned or that the letter dated January 2, 1967 was received by him. It is no-body's case that any enquiry was held into the charges. Under the chargesheet he was only suspended for three days and not for the entire period pending enquiry. I cannot, therefore, connect this stoppage of work with the charge which remained a charge only and was not proceeded with. Nor does it appear that the workman concerned was proceeded against for absenteeism. There is no such charge against him. This is also not the case of the management against the workman as made before this tribunal.

7. In paragraph 8 of the written statement filed by the management, which I have summarised hereinbefore, it was stated that there was a settlement before the Labour Enforcement Officer under which the workman was paid his compensation and thereafter there was no question of re-employing him. If this had been borne out by evidence, I might have considered this. Witness Sarat Chandra Dutta in his evidence, however, stated:

"The workman also went before the Labour Officer. There the workman asked for re-employment and back wages. The manager was willing to give him re-employment and no back wages, because he was wilfully sitting idle. I do not know what happened thereafter."

Thus, the non-employment of the workman was not due to what was pleaded in paragraph 8 of the written statement.

8. The workman in his evidence proved two registered letters addressed by him to the Manager. By his letter, dated February 20, 1967, the workman asked for retrenchment compensation but did not ask for re-employment. In his evidence, however, he stated that he waited on the colliery for about a month after work had been refused to him. Thereafter, he fell sick and went home. If the workman is a truthful witness, he might have written both the letters under the belief that he would not be given re-employment and therefore only aspired for monetary compensation.

9. On the evidence before me, I do not find any reason for stopping the workman concerned from work with effect from December 23, 1966. It cannot be for any misconduct because no misconduct has as yet been proved against the workman. It cannot be for absenteeism because that was not the case which was made or emphasised before this tribunal.

10. Before I close this award, I need dispose of a point somewhat half-heartedly argued by Mr. Burman. He doubted that the workman concerned was a member of Khan

Mazdoor Sangh. The workman said that he was a member. There is nothing to show to the contrary. I, therefore, over-rule this point.

11. In the view that I take, I hold that the management of Samla Dalurband Colliery was not justified in stopping Dharmadas Ghose, Mining Sirdar from work with effect from the 23rd December, 1966. Before me the workman concerned expressed his desire to get back the work. I, therefore, direct his reinstatement with effect from the date of publication of the award. Regard being had to the conduct of the parties, in which the employee did not show earlier interest for re-employment, I direct the management to pay to the workman half the wages for the period of his forced idleness. The period of his forced idleness shall not be treated as break in his service.

This is my award.

(Sd.) B. N. BANERJEE,
Presiding Officer.

Dated, the 26th October, 1968

[No. 6/25/68-LRII.]

S.O. 4073.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Dhanbad, in the industrial dispute between the employers in relation to the Malkera Colliery of Messrs. Tata Iron and Steel Company Limited, Jamadoba, Post Office Jealgora (Dhanbad) and their workmen, which was received by the Central Government on the 28th October, 1968.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT (NO. 1), DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 64 OF 1967

PARTIES :

Employers in relation to the Malkera Colliery of Messrs. Tata Iron and Steel Company Limited, Jamadoba, Post Office Jealgora, Dist. Dhanbad.

AND

Their Workman.

PRESENT:

Shri Kamla Sahai, Presiding Officer.

APPEARANCES :

For the Employers: Shri L. H. Parvatiyar, Legal Assistant.

For the Workman: Shri B. N. Sharma, President, Congress Mazdoor Sangh, Bihar, Jorapokhar No. 1, P. O. Jealgora, Dist. Dhanbad.

STATE: Bihar.

INDUSTRY: Coal.

Dhanbad, dated the 18th October, 1968

AWARD

By its order No. 2/36/67-LRII dated the 21st March, 1967, the Central Government, in the Ministry of Labour, Employment and Rehabilitation, has made this reference to this Tribunal for adjudication of an industrial dispute which has been described in the schedule as follows :—

SCHEDULE

"Whether the management of Malkera Colliery (Post Office Malkera, District Dhanbad) of Messrs. Tata Iron and Steel Company Limited, Jamadoba, Post Office Jealgora, District Dhanbad was justified in stopping from work Sarvashri Sukan Hazam, Underground Trolleyman, Chhota Nanhak Dusadh, Underground Trammer and Sujait Hussain, Underground trammer with effect from the 7th June, 1966 and subsequently discharging them from service with effect from the 9th November, 1966, 29th November, 1966 and the 22nd January, 1967, respectively? If not, to what relief are the workmen concerned entitled?"

2. At the time of hearing, Shri B. N. Sharma, President, Congress Mazdoor Sangh, Bihar, who personally appeared on behalf of the union, stated that, out of the three workmen whose cases have been referred for adjudication in this reference, he does not press the case of Sukan Hazam and Ch. Nanhak Dusadh, Underground trammers of Malkera Colliery, because they have taken their full and final settlement from the company including their provident fund, retiring gratuity etc., and have gone. He has pressed the case of Sujait Hussain only. I am, therefore, concerned with his case. The two questions which have to be decided are (i) whether the management of Malkera Colliery was justified in stopping Sri Sujait Hussain from work with effect from the 7th June, 1966; and (ii) whether the management of the same colliery was justified in discharging him from service with effect from the 22nd January, 1967.

3. I may now state the facts of the case briefly. The Manager of the Malkera colliery of M/s. Tata Iron and Steel Company Limited, sent a letter (Ext. M) dated the 25th May, 1966 to four workmen namely S/Shri B. Md. Sadique, Ch. Nanhak Dusadh, Sukan Hazam and Sujait Hussain, all underground trammers, asking them to appear before the Medical Board at Jamadoba hospital on the 26th May, 1966 for their medical examination. They addressed replies to the Chief Mining Engineer, Jamadoba, on the 26th May, enquiring the reasons for their being asked to appear at the medical examination. The letter of Sujait Hussain is Ext. M2. The Manager, Malkera Colliery, then sent letters to the workers on the 1st June, 1966, the letter addressed to Sujait Hussain being Ext. M5. A substance of the contents of that letter is that the workmen concerned was understood to be in poor health and that it was, therefore, necessary for their own safety that there should be a medical check up and their physical fitness should be ascertained. He further advised them to appear before the Medical Board on the 2nd June, 1966 at 4 p.m. This instruction was not complied with. A slip (Ext. M28) was issued by the Manager on the 7th June, 1966 to three of the workmen namely all except Md. Sadique to appear for medical check up before the Asstt. Medical Officer, Malkera Dispensary. The workmen did not appear even before the Asstt. Medical Officer. By a letter dated the 8th June addressed to all the four workmen, the Manager regretted that they had not appeared for medical check up which was necessary for their own safety and, therefore, he was stopping them from their duties with effect from the 7th June, 1966 as they had already, been told verbally on 7th June, 1966. The Chief Mining Engineer, Jamadoba, issued letters dated the 15/16th June, 1966 to Sukan Hazam, Sujait Hussain and Ch. Nanhak Dusadh, explaining that it was necessary for their own safety that they should appear for their medical check up and saying that they would not be allowed to resume work unless they complied with the Manager's instructions "as it involve certain risk". The letter to Sujait Hussain is Ext. M9.

4. Sri B. N. Sharma, President, Congress Mazdoor Sangh, addressed a letter (Ext. M11) dated the 9th June, 1966 to the Asstt. Labour Commissioner (C), Dhanbad, raising a dispute about the stoppage of work of the four workmen with effect from the 7th June, 1966.

5. The Asstt. Labour Commissioner sent a letter (Ext. M17) dated the 1st October, 1966 to the Chief Labour Commissioner (C), New Delhi, wherein he stated that Sri B. N. Sharma, President of the union, had agreed to make the four workmen concerned appear for examination before the medical board without prejudice to their rights and also without prejudice to the right of the union to raise the dispute again if it was dis-satisfied with the decision of the management.

6. It appears that Sujait Hussain had gone home and, therefore, it was on the 3rd November, 1966 that he appeared for examination before the Medical Board. Sukan Hazam appeared and was examined on the 20th October, 1966. They were both found unfit. Ch. Nanhak Dusadh was first examined on the 20th October but was then advised to re-appear with specs on another date. In spite of repeated calls, he did not appear with glasses until the 10th November, 1966. Hence he was also declared to be unfit.

7. The certificate (Ext. M26) shows that the Medical Board examined Md. Sadique on the 3rd November, 1966 and found him fit. In view of this report, he appears to have been taken back in service. That is the reason why the reference does not include his name.

8. I proceed now to consider the two questions formulated in paragraph 2.

Question No. (1)

It seems clear that the management received information that Sujait Hussain and the other workmen were in poor health. Apart from the fact that, if he was actually in poor health, he could not do his work properly, there was a great risk to his own health. The management cannot be said to have committed any fault in trying to ascertain from

the Medical Board whether he was physically fit or unfit. The only way for them to ascertain this fact was to get him examined by the Medical Board. The union's allegation that the Medical Board merely acted in accordance with the management's instructions is obviously untrue because that Board found Sadique to be fit. Had it been guided by the management's instructions, it would not have held any workman referred to it to be physically fit. Besides, Dr. A. K. Bhattacharjee (M. W. 1) has been examined before me. He says that the Medical Board consisted of himself as the Chief Medical Officer and two other Doctors. He further says that it is not a fact that his Board declared Sujait Hussain to be unfit on the bidding of the management and adds that the Board is completely independent and gives its correct opinion. There is no reason to dis-believe his evidence on this point.

9. In spite of repeated instructions from the management, Sujait Hussain besides other workmen did not appear for medical examination. Some method had, therefore, to be found to force him and other workmen to appear for such examination before the Medical Board. The Manager decided to stop him and others until they appeared for their medical examination. I do not think that there was any illegality or unfairness in this action. Indeed, I hold that the management was justified in stopping Sujait Hussain from his work with effect from the 7th June, 1966.

Question No. (ii)

10. In order to decide this question, I have to consider whether the evidence shows that Sujait Hussain was physically unfit. Dr. Md. Mohsin, (W. W. 2) has been examined before me. He has stated that, in July, 1966, he was in charge of the Jogta State Dispensary located at Katrasgarh, that he examined Sujait Hussain of Malkera Colliery on the 10th July, 1966 at Katras and that he found him mentally and physically fit for any active duty. He has added that he did not discover in him any disease, reformity or abnormality. He has proved a copy of his certificate [Ext. M 13(a)] which bears out his evidence. Although he has been cross-examined by Sri Parvatiyar, the representative of the company, I do not see any good reason to disbelieve the evidence of this Doctor.

11. It will be noticed that Sujait Hussain appeared before the Medical Board about four months later, on the 3rd November, 1966. Dr. Bhattacharjee (M. W. 1) has proved the report (Ext. M 23) of the Medical Board in connection with Sujait Hussain. The Medical Board's remark on this report is "X" Ray chest: Extensive infiltration of both sides of lungs, with P. V. prominence of both sides". He has stated that the X'Ray photograph (Ext. M 27) is that of the chest of Sujait Hussain and that the report of the Medical Board is based upon this photograph. On being cross-examined, he has stated that Ext. M 27 along with other photographs were taken by Sri B. N. Banerjee, an X'Ray Technician, and he is alive. Sri B. N. Banerjee has not been examined. Dr. Bhattacharjee has not said that the photograph was taken in his presence. There is no evidence to show that the photograph bears any identification mark which could enable the Doctor to identify it as the photograph of Sujait Hussain's chest. Unless it is the photograph of his chest, the whole basis of the medical board's opinion goes. The most important link to prove that the medical board's opinion relates to the chest of Sujait Hussain and not to the chest of any other men, therefore, disappears. I am, therefore, unable to accept the Medical Board's opinion in connection with the unfitness of this workman.

12. I may add that Sujait Hussain examined himself before me on the 27th July, 1968. He then appeared to me to be perfectly fit. I am not a medical man but I can certainly say whether a man is weak and sickly or not. If he had been suffering from extensive tuberculosis as stated by Dr. Bhattacharjee (M. W. 1), I would not have expected him to be hale and hearty on the date on which he gave his statement before me.

13. In the circumstances mentioned above, I hold that the Medical Board's opinion may not have been based upon the X'Ray photograph of Sujait Hussain's chest. Its opinion that he was unfit cannot, therefore, be relied upon. In view of this finding, I hold that the management was not justified in discharging Sujait Hussain with effect from the 22nd January, 1967. Hence, he is entitled to be reinstated in his old post with all his back wages from the 22nd January, 1967.

14. This is my award. It may now be submitted to the Central Government under section 15 of the Act.

Sd./- KAMLA SAHAI,
Presiding Officer.

[No. 2/36/67-LRII.]

S.O. 4074.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the Ramnagar Colliery of Messrs Vindhya Collieries (Private) Limited, Post Office Ramnagar Colliery (District Sahdol) Madhya Pradesh and their workmen, which was received by the Central Government on the 26th October, 1968.

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
1600, WRIGHT TOWN, JABALPUR**

Dated September 21, 1968

PRESENT:

Sri G. C. Agarwala.—*Presiding Officer.*

CASE REF. No. CGIT/LC(R)(147) OF 1967

PARTIES:

Employers in relation to the Ramnagar Colliery of Messrs Vindhya Collieries (Private) Limited, Post Office Ramnagar Colliery (District Sahdol), Madhya Pradesh.

Vs.

Their workmen, represented through the Ramnagar Colliery Shramik Sangh, P.O. Ramnagar Colliery, District Sahdol (Madhya Pradesh).

APPEARANCES:

For Employers.—S/Sri J. K. Choudhary, Advocate, & D. P. Agarwal, Manager.

For Workmen.—Sri B. P. Sharma, General Secretary of the Union.

INDUSTRY: Coal Mine.

DISTRICT: Sahdol (M.P.)

AWARD

By Notification No. 5/52/67-LRII dated 23rd October, 1967, the Ministry of Labour Employment & Rehabilitation (Department of Labour & Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference, to this Tribunal for adjudication:—

MATTER OF DISPUTE

Whether the action of the management in terminating the services of T. C. Kaliya, Overman with effect from the 1st May, 1965 is justified? If not to what relief is the workman entitled?

2. The concerned workman, Sri T. C. Kaliya was an Overman in the service of the Colliery from September, 1963. He was President of a Union, Ram Nagar Colliery Shramik Sangh. There is another union by the name of Koyala Khadan Shramik Sangh Ramnagar and Bijuri Colliery of which Sri Shivmangal Singh is the President. The latter union has established its foot hold in this colliery having about 700 workers as its members and the membership of the Union presided by Sri Kaliya had been gradually dwindling from about 400 members in 1964—66 to about 50 in 1967.

3. On 16th April, 1967 at about 4-30 P.M. Sri T. C. Kaliya, to be hereinafter described as Kaliya, was taken from the colliery by about 25 workers to the Manager in Ram Nagar in a truck along with a woman, Smt. Phool Bai. Among those who had taken Kaliya were S/Sri Shivmangal Singh, Rajini Kant, Shankar & Pancham. They alleged that Kaliya had molested Smt. Phool Bai and had tried to outrage her modesty. The statement of Phool Bai was got recorded by the Manager through the Labour Welfare Officer (Ex. E/3). In that statement, she confirmed the allegation. Her version as stated before this Tribunal was that on the date in question at about 3-30 P.M. Kaliya who was supervising the work of women labourers and beldars at the new incline was drunk with *daru*. He had seated himself in a coal tub which was in tilted position. In the same tub were sitting two other women Smt. Parbatia and Smt. Dubasia. They both called her saying that Kaliya Babu wanted water. She hesitated but ultimately went with water. Kaliya caught hold of her hand and tried to drag her. She shouted for help which attracted the attention of a number of persons. Sri Shankar was the first to come for help and later on S/Sri Shivmangal Singh, Rajnikant and Pancham along with others came there. Seeing them Kaliya released his grip. Then both Kaliya and she were taken in a truck to the Manager's office in Ramnagar. She went to police station but as head muharir was not found she went to Bijuri police station next morning where she lodged a report. It may be mentioned that a police case is pending against Kaliya and has not yet been decided. The version of Smt. Phool Bai has been supported by the evidence of two witnesses S/Sri Pancham and Shivmangal Singh before this Tribunal. The Manager, Sri D. P. Agarwal, came in evidence

and corroborated the version how Kaliya was brought by workers and Smt. Phool Bai gave her statement. He stated that the situation was tense and the workers had threatened that they would go on strike. He however, pacified the workers. Kaliya then slipped away and in the night came and gave an application (Ex. E/4) stating that Smt. Phool Bai should be medically examined and arrangement for his medical treatment be made as he had been beaten by workers. Kaliya then absented from duty and was not to be found.

4. On 23rd April, 1967 Sri Shivmangal Singh gave an application (Ex. E/5) to the Manager threatening that if no action was taken against Kaliya there would be a strike with effect from 5th May, 1967. Evidently, unnerved by this communication the Manager without charge-sheeting or holding any domestic enquiry terminated the services of Kaliya by means of a communication dated 29th April, 1967. It may be material to reproduce the termination order which runs as follows:—

"It has been reported to me in writing by Smt. Phool Bai that on Sunday dated 16th April, 1967 at about 3 P.M. in the evening you tried to molest her forcibly by taking her away while you were on duty and were also drunken. While I was in the office, you were brought along with Srimati Phool Bai at about 4-30 P.M. in the truck by about 25 workers of the colliery. The statement of Shrimati Phool Bai was recorded in the office before Shri Shivmangal Singh, President of Koyla Khadan Shramik Sangh Rajnagar and Bijuri Colliery.

Since the charges against you are of very bad nature and workers of the colliery have made a concrete demand through their union, namely Koyla Khadan Shramik Sangh Rajnagar and Bijuri colliery that "either you should be dismissed or they will be constrained to go on strike from 5th May, 1967".

You are also remaining absent from your duty of your own accord since 17th April, 1967 to 28th April, 1967. Due to the above acts of yours, the company has lost faith on you and since the workers of the colliery have also demanded your dismissal, hence to avoid strike and maintain peace in the colliery the management has decided to terminate your service with effect from 1st May, 1967. You will be given one month's salary in lieu of notice as provided in the standing order.

You are required to vacate the co's quarters immediately and take your full and final account on any working day from the office."

It may be mentioned that the services of Kaliya were terminated from 1st May, 1967 and not from 1st May, 1965 as mentioned in the schedule to the order of reference which evidently is a typographical error. There is no dispute that the services were terminated with effect from 1st May, 1965.

5. On behalf of Kaliya a complaint was made by the Union on 21st July, 1967 raising an industrial dispute and alleging that the termination of Kaliya was in act of victimisation under the influence of the President of a rival union. The conciliation having failed resulted in this reference.

6. The case of the Union on behalf of Kaliya was that Sri Shivmangal Singh wanted to uproot the union run by Kaliya altogether and therefore conspired and fabricated a false case. He came on the date and time in question with 10 or 12 persons, all armed with lathis and dandas and assaulted Kalia for no rhyme or reason. They forcibly took him in a truck as also Smt. Phool Bai who had been previously tutored to the Manager and Smt. Phool Bai was made to give a false statement. It may be mentioned that Kaliya has also filed a criminal case for assault and battery against these persons which is pending. In support of this case, some witnesses were examined before this Tribunal and the evidence would be discussed at a proper stage.

7. On behalf of the management, a preliminary objection was raised that the Union, Ram Nagar Colliery Shramik Sangh, was not competent to espouse and represent and that Sri B. P. Sharma is neither the General Secretary nor competent to represent the union. Since parties concerned desired a finding on the preliminary objection they were required to lead necessary evidence which they did and a finding was recorded on 10th July, 1968. This is part of the award as annexure "A". After it was held that the Union was competent to espouse and represent and that as Sri B. P. Sharma was its General Secretary he was competent to represent the Union, the parties were required to lead evidence on merits of the respective stands taken by them in their pleadings. The management re-examined the Manager, Sri D. P. Agarwal and produced three witnesses S/Sri Pancham, Shivmangal Singh and Smt. Phool Bai as stated above, on the point of the alleged molestation of Smt. Phool Bai. On behalf of the Union, a list of seven witnesses was furnished out of which five were examined, namely Smt. Parbatiya, Smt. Nan Bai, S/Sri Badri Prasad, Rampal and Bahoo. T. C. Kaliya disqualified himself for examination as he remained in Court while other witnesses were being examined. The seventh witness Smt. Dubasia was not present and adjournment was considered unnecessary.

8. The order of termination reproduced earlier is in exercise of clause 4 of the appointment letter dated 5th August, 1964 (Ex. E/7) which confers power of termination by one month's notice on either side. This power of termination either by contract or under Standing Orders is not unrestricted but is subject to scrutiny by Tribunals. The law as stated by the Labour Appellate Tribunal as far back as 1951 in *Buckingham and Carnatic Company Ltd. etc. v. workers of the Company, etc.* (1951-II-LLJ p.314) was accepted and reiterated by the Hon'ble Supreme Court in a number of decisions (*vide* *Chartered Bank, Bombay Vs. Chartered Bank Employees' Union* and another, 1960-II-LLJ p.222; *Assam Oil Company, Ltd., Vs. Its workmen*, 1960-I-LLJ p. 587; *U. B. Dutt & Co. (P) Ltd. Vs. Its workmen (Kozhikode Taluk Earcha Mill Thozilali Union)* 1962-I-LLJ p.374. In all these cases it was held that the employers have to establish the bonafides and if the termination of service is in colourable exercise of the power or as a result of victimisation or unfair labour practice, the tribunal would have jurisdiction to intervene and set aside such termination. In *Assam Oil Company case (supra)* it was further observed that if the discharge was punitive, "the tribunal would be justified in dealing with the dispute on the basis that despite its appearance to the contrary an order of discharge is in fact an order of dismissal The exercise of the power in question to be valid must always be *bonafide* and should not be passed with ulterior motives." It was further observed as follows:—

"It may also appear in some cases that though the order of discharge is couched in words which do not impute any misconduct to the employee, in substance it is based on misconduct of which, according to the employer, the employee has been guilty; and that would make the impugned discharge a punitive dismissal. In such a case fairplay and justice require that the employee should be given a chance to explain the allegation weighing in the mind of the employer and that would necessitate a proper enquiry. Whether or not the termination of services in a given case is the result of the *bonafide* exercise of the power conferred on the employer by the contract or whether in substance it is a punishment for alleged misconduct would always depend upon the facts and circumstances of each case. In this connection it is important to remember that just as the employer's right to exercise his option in terms of the contract has to be recognised so is the employees right to expect security of tenure to be taken into account." The same principle was reiterated by the Supreme Court in *Tata Oil Mills Co. Ltd. Vs. Workmen* reported in F.L.R. 1966(13) page 65 and reaffirming the principle enunciated in earlier cases, it was stated that "the test always has to be whether the act of the employer is *bonafide* or not. If the act is *malafide* and appears to be colourable exercise of the power of contract, . . . industrial adjudication would examine the substance and would direct reinstatement in a fit case." It follows therefore that the bonafides and the substance of the order, whether a discharge or dismissals, are the chief points which have to be considered in industrial adjudication. If the management's action was bonafide even though the conduct for which the services of the workman has been terminated may amount to misconduct, the employers would still be justified in terminating the services by way of discharge and not resorting to the procedure of charge-sheeting and passing an order of dismissal after domestic enquiry. This position of law was again emphasised in *Murugan Mills, Ltd. Vs. Industrial Tribunal, Madras* and another, 1965-I-LLJ p.422. The point to be considered in this case is whether in all cases the management where a power of discharge is exercised must charge-sheet, hold a departmental enquiry or failing which must establish the misconduct before the tribunal or the obligation is discharged by establishing his *bonafides* which means that the employer has only to establish what in tort would be termed as a reasonable and probable cause for the belief that the conduct of the workman concerned was unworthy. In *Workmen of Motipur Sugar Factory (P) Ltd. Vs. Motipur Sugar Factory (P) Ltd.*, 1965-II-LLJ p.162, the Hon'ble Supreme Court observed as follows:—

"In either case, if the enquiry is defective or if no enquiry has been held as required by the Standing Orders the entire case would be open before the tribunal and the employer would have to justify on facts as well that it's order of dismissal or discharge was proper".

From what has been quoted above, it follows that the only duty which is cast upon the employers in the case of a discharge is to establish the bonafides that the order was justified and proper. There is no obligation on the employers to establish before the tribunal not only the bonafides but to prove the misconduct beyond reasonable doubt. An employer cannot be required to furnish such evidence as is necessary to prove an offence in a criminal trial and the standard of proof would not be the same as is required in a criminal case. As a matter of fact, he has to establish his own bonafides and not necessarily the guilt of the workman concerned. This is what I consider to be the import of observations of Hon'ble Supreme Court in various cases cited above though there is no direct

authority on the point. Judged in that light facts and the evidence produced in the case may be considered.

9. It is an admitted position that Kaliya with Smt. Phool Bai had been taken to Manager in a truck by about 25 workers who all alleged of misbehaviour on the part of Kaliya towards Smt. Phool Bai and who gave her statement before the Manager. It is further an undisputed fact that Kaliya slipped away and gave his application in the night to the Manager desiring medical examination of the women. This was a wholly baseless request as there was no allegation that the women had been ravished or any rape committed. It is further evident that Kaliya had remained absent since that day till his services were terminated. When so many persons had alleged misbehaviour and the women was coming forward to support it and had in fact lodged report in police and considering the fact that Kaliya had been absenting and had not set up a counter story in his application (Ex. E/4) as is done now, the Manager had a good and reasonable ground to suppose that there was some substance in the allegation and his bonafides cannot be impeached if services were terminated in exercise of the power derived by contract. The allegation that the Manager terminated the services under pressure of the rival union is unfounded. No such allegation was made by Kaliya in his application (Ex. E/4) or even subsequently till his services were terminated. Even after termination, the Union took the case on 21st July, 1967 nearly two months after the occurrence. If the whole thing had been concocted a tremendous hue and cry would have been raised by his union against the conduct of the rival union and the management. The management by examining Smt. Phool Bai and two other witnesses, namely Shivmangal Singh and Pancham have proved that in fact there was some misbehaviour by Kaliya with Smt. Phool Bai. The evidence which the Union produced to rebut the management's evidence does not inspire confidence. Out of the two women Smt. Parbatia and Nan Bai (W. Ws. 9 and 10), Smt. Parbatia is the women who was stated by Smt. Phool Bai to have been sitting with Kaliya in a compromising situation in a tub. Both she and Nan Bai stated differently than other witnesses saying that after Sri Shivmangal Singh and his party took away Kaliya, Smt. Phool Bai was taken subsequently by them. The other witnesses, Badri Prasad, Rampal and Baboo stated that Smt. Phool Bai was commanded by Sri Shivmangal Singh to accompany them and was taken at one and the same time to the truck. These witnesses had not been mentioned by Kaliya in his application (Ex. E/4) to the Manager. Sri Badri Prasad claims that he was fixing machine at some distance and there was no misbehaviour on the part of Kaliya with Smt. Phool Bai. According to him, Sri Shivmangal Singh and others without giving any reason started beating Kaliya with lathis and dandas. Before taking him Sri Shivmangal Singh commanded Smt. Phool Bai to accompany them and told her that she would have to depose what had been tutored earlier. This is most extraordinary and cannot be accepted. The presence of S/Sri Rampal and Baboo (W. Ws. 12 and 13) is doubtful. According to Sri Rampal his duty hours had finished at 2 P.M. and he was going home. Some two furlongs beyond he found Sri Shivmangal Singh and party conspiring that they would teach Kaliya a lesson. Sri Shivmangal Singh commanded him to accompany them and out of fear he went with them. This is all a cock and bull story. He had no business to remain loitering about for about 1½ hours after his duty hours were over. He also stated that Smt. Phool Bai was commanded to accompany Sri Mangal Singh and was told to state what had been tutored earlier which is most unconvincing. Sri Baboo (W. W. 12) stated that although his duty hours commenced from 4 P.M. he had come earlier by bicycle at about 2.30 P.M. Sri Shivmangal Singh commanded him and therefore he followed them. It is unlikely that he would have come so early before his duty hours. All these witnesses are such who do not inspire confidence. Be as it may, it is not necessary to record a categorical finding whether Kaliya was in fact guilty of molestation of Smt. Phool Bai. Any such finding may adversely affect the criminal case pending against him. For purposes of this case, it would be sufficient to examine the bonafides of the management in terminating his services. In other words, it is a subjective mental state of the employer which is really material in the case of discharge and not a positive proof of the misconduct. The circumstances stated above were sufficient to justify the action of the Manager in terminating the services of Sri Kaliya. There was no motive of victimisation or unfair labour practice in doing so. The power was exercised bonafide and not with an oblique motive.

Decision:

The result is that issue under reference is answered in affirmative. The termination of services of Sri T. C. Kaliya was justified and he is not entitled to any relief. No order for costs.

Sd./- G. C. AGARWALA,
Presiding Officer.
21-9-1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR.

Dated July 10, 1968

PRESENT:

Sri G. C. Agarwala, Presiding Officer.

CASE REF. No. CGIT/LC(R)(147) OF 1967

PARTIES:

Employers in relation to the Ramnagar Colliery of M/s. Vindhya Collieries (Private) Limited, Post Office Ramnagar Colliery (District Shahdol) Madhya Pradesh.

Vs.

Their workman, represented through the President, Ramnagar Colliery Shramik Sangh, P.O. Ramnagar Colliery, District Shahdol, M.P.

ORDER

By Notification No. 5/52/67-LRII dated 23rd October, 1967, the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference, to this Tribunal for adjudication:—

MATTER OF DISPUTE

Whether the action of the management in terminating the services of T. C. Kaliya, Overman with effect from the 1st May, 1965 is justified? If not to what relief is the workman entitled?

2. After the pleading of the parties were filed, certain additional issues were framed in the case on 6th February, 1968. The management raised a plea that Ramnagar Colliery Shramik Sangh, the representative of the workman, in their colliery had ceased to function and had become defunct. Consequently, it could not raise the dispute and the dispute is not an industrial dispute. In the rejoinder filed by the management, it was pleaded that Sri B. P. Sharma who purported to sign the written statement was not the General Secretary and was not competent to represent. There were other pleas raised on which two other issues were framed which need not be stated at present as the parties agreed that the preliminary objection may be disposed of before going into other issues. Consequently, evidence was recorded and arguments were heard on the issue reproduced below:—

Preliminary Issues

1. (a) Whether Ramnagar Colliery Shramik Sangh was competent to espouse and represent?
- (b) Is Shri B. P. Sharma, General Secretary of Ramnagar Colliery Shramik Sangh and competent to represent the Union?

Findings:—Issue No. 1(a) & (b).

In the written statement of the management, the preliminary objections as stated in paragraphs 1, 2 & 3 are (1) the dispute is not an industrial dispute (2) the dispute has not been validly raised and hence reference is bad in law and (3) the dispute has neither been raised nor the cause has been espoused by the workmen of the employer. Except for making these bald statements, reasons thereof have not been mentioned. In the statement of facts, it was stated that Sri T. C. Kaliya on 16th April, 1967 at about 4-30 P.M. had molested a woman Smt. Phool Bai and was brought in custody by a number of workmen. Another Union, Kovla Khadan Shramik Sangh Rajnagar and Bijuri Colliery pressed for immediate action against Sri Kaliya on threat of strike and therefore the management had to take this action in terminating the services of Sri Kaliya. In the rejoinder, it was stated that in Ramnagar Colliery, there was no Union named as Ramnagar Colliery Shramik Sangh and all the members of this Union are members of Kovla Khadan Shramik Sangh Rajnagar and Bijuri Colliery. It was further alleged that the management had not seen Sri B. P. Sharma in the Colliery and who is an outsider. He was, therefore, not competent to represent. The stand taken by the management appears to be ill-conceived. The Union, Ramnagar Colliery Shramik Sangh, was admittedly a Union which had been recognised by the management for the last few years. Ex. W/1 is a copy of Registration Certificate of the Union which shows that it was registered on 12th January, 1965. There was a case before this Tribunal No. CGIT/LC(7)/66 in which both the Unions, Kovla Khadan Shramik Sangh Rajnagar and Bijuri Colliery as also Ramnagar Colliery Shramik Sangh

were parties. A copy of the additional written statement in case No. 7/66(Ex. W/4) would show that in that case the management contested the competency of Koyala Khadan Shramik Sangh to represent the workers and not of Ramnagar Colliery Shramik Sangh. Ex. W/5 is a copy of the order sheet in that case which would show that this Union continued to represent the workmen and was recognised as such by the management when the dispute was settled in February, 1967. The management applied for postponement on one date in that case and Ex. W/11 is a copy of the application in which an adjournment was sought from 16th December, 1966 to any other date after 25th January, 1967 as the Manager had been assaulted and was confined to bed. Copy of the application was sent to this Union also. Consequently, it does not lie in the mouth of the management to contend that at least till early part of 1967 this Union had not been functioning. What the management contended was that after the strike in the Colliery which took place in December, 1966 the rival Union, Koyala Khadan Shramik Sangh Rajnagar and Bijuri established its hold on the workers thereby displacing this Union which has not been functioning. It does not stand to reason that the Union would die out so soon after the strike of December, 1966. It is indeed true that the other Union gained an upper hand and the management had to yield to the pressure but that does not mean that this Union got extinct. The Union which is duly registered cannot die unless dissolved under Sec. 27 or the registration is cancelled under Sec. 10 or amalgamated under Sec. 24 of the Indian Trade Unions Act. The Union was required to file the Membership Register, Minutes Book and the Cash Book which they have done. The Minutes Book reveal that it has been current from 1964. There was a general meeting held on 21st November, 1966, the minutes of which were recorded and office bearers were elected. Ex. W/2 is a copy of the letter sent to Registrar, Trade Unions. Sri T. C. Kalia, the workman concerned, was re-elected as President, Sri B. P. Sharma as General Secretary in place of Sri Ramji Singh and Sri Ramji Singh was elected as Secretary in place of Sri Bhal Chandra Singh. The management has not disputed the activity of this Union till 1967 and the proceedings must be deemed to have been genuinely and correctly recorded. The capacity of Sri B. P. Sharma to represent as General Secretary is thus established by the minutes of this meeting. Under the Constitution, he was elected as a honoured member as stated by him in evidence. Further proceedings of the meeting of Executive Committee dated 9th February, 1967, 18th May, 1967, 10th October, 1967, 18th November, 1967 and 2nd January, 1968 are disputed and are alleged to have been subsequent interpolations. A few witnesses were examined by the management to state that no meetings were held. The evidence of Sri Ramji Singh (E. W. 2) who was the Secretary cannot be believed for the simple reason that he had signed the proceedings dated 9th February, 1967, 10th October, 1967 and 18th November, 1967. His statement that his signatures were subsequently obtained on the fabrications made cannot be accepted for the reason that in between the meeting dated 9th February, 1967 and 10th October, 1967 there was a meeting dated 15th October 1967 which does not record his attendance and bear his signature. This means that he was not present in that meeting. If his signatures had been obtained subsequently that could have been done for the meeting dated 15th October, 1967 also. It shows that these meetings were undoubtedly held. The minutes dated 2nd January, 1968 are of a general meeting in which new office bearers were elected. There was no change in the office of the President, Vice-President and General Secretary. Only the Secretary was changed from Sri Ramji Singh to Sri Jagdish Ram Banga and for Cashier from Sri R. B. Banerji to Sri Pursottam Lal. The list of office bearer seems to have been sent to the Registrar, Trade Unions and Ex. W/17 is a certificate from the Registrar showing necessary entry of office bearers elected for the year 1966-67 on 21st November, 1966 and for the year 1968 on 2nd January, 1968. Membership register shows that the membership which was 370 in the year 1964-65 and 416 in the beginning of 1966 was reduced to 50 in the beginning of 1967. This membership further dwindled to 31 only in the beginning of 1968. To this extent the contention of the management is undoubtedly correct that the Union lost its hold to a great extent on the workers of the Colliery. But it cannot be said that the Union had died out altogether. A number of witnesses came to depose about the continuance of the Union. Shri Baij Nath Prasad Sharma (W. W. 1) stated how he had been taken as an honoured member of the Union and has continued to be its General Secretary. Sri Pursottam Lal Kalia (W. W. 2), the present Cashier in place of Sri R. B. Banerji was produced by the management as E. W. 3. Sri Pursottam Lal Kalia is a brother of Sri T. C. Kalia and he obtained the Cash Book from Sri Banerji on 3rd February, 1968 giving a receipt (Ex. E/9). He seems to have been over zealous and has taken off page 19 of the Cash Book (Ex. E/15) with the corresponding page 32 both being missing. This was done by Sri Pursottam Lal Kalia in order to suppress some entries which may have been made by Sri Banerji but this does not detract the value of other evidence in the case. The fact remains that the Union continued to exist in support of which besides the documentary evidence there is other evidence of a number of witnesses, namely O. P. Tuknait who was the Vice-President, Pooran, Member Executive Committee, Ram Sewak, Laxhan, Burnoo and Jagdish Ram Banga who is now the Secretary of the Union. The evidence at least shows that there is still life in the Union which has only about 31 members. Even if the number is small the dispute

when it relates to the dismissal of its President is sufficient enough to be an industrial dispute and particularly so when the management admitted that his services had to be terminated under pressure of the rival Union. When the management itself recognised this Union in preference to the other Union, it does not lie in the mouth of the management to contend that this Union is dead and has lost its representative capacity. Sri B. P. Sharma who was evidently elected as General Secretary in November, 1966 till then there was no dispute and the Union was admittedly functioning. He continued to be its General Secretary even if the meeting dated 2nd January, 1968 is ignored. In either view of the matter, Sri B. P. Sharma is competent to represent on behalf of the Union and the Union was competent to raise the dispute regarding the dismissal of its President. The dispute is thus an industrial dispute.

Sd./- G. C. AGARWALA,
Presiding Officer.
10-7-1968.

Part of Award

Sd./- G. C. AGARWALA,
Presiding Officer.
[No. 5/52/67-LRII.]

ORDERS

New Delhi, the 1st November 1968

S.O. 4075.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the P. D. Kajora Colliery, Post Office Kajoramgram (Burdwan) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Calcutta, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of P. D. Kajora Colliery, Post Office Kajoramgram, District Burdwan was justified in terminating the services of S/Shri Jalim Harijan and Dila Mia, Pick Miners with effect from the 27th April, 1968? If not, to what relief are these two workmen entitled?

[No. 6/60/68-LRII.]

S.O. 4076.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the East Bastacolla Colliery, Post Office Dhansar (Dhanbad) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of the section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, (No. 3), Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of East Bastacolla Colliery, Post Office Dhansar (Dhanbad) is not allowing their workman Shri Bhuneswar Mahato, Timber man, to join duty from the 8th April, 1968 and subsequently suspending him for 10 days from the 12th April, 1968 was justified? If not, to what relief is the workman entitled?

[No. 2/151/68-LRII.]

S.O. 4077.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Newton Chickly Colliery, Post Office Parasia, District Chhindwara (Madhya Pradesh) and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of the section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, Jabalpur, constituted under section 7A of the said Act.

SCHEDULE

Whether the action of the management of Newton Chickli Colliery, Post Office Parasia, District Chhindwara (Madhya Pradesh) in dismissing Shri Chhote Khan, Cut Machine Helper, vide their letter No. 684/128 dated the 23rd February, 1968 with effect from the 23rd February 1968 was justified? If not, to what relief is the workman entitled?

[No. 5/40/68-LRII.]

New Delhi, the 4th November 1968

S.O. 4078.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Patmohna Colliery, Post Office Sitarampur, District Burdwan and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

SCHEDULE

Whether the management of Patmohna Colliery Post Office Sitarampur, District Burdwan was justified in directing the workmen employed at 7 and 8 Inclines of the Colliery to proceed on leave without pay for three months with effect from the 19th August, 1968? If not, to what relief are the workmen who refused to proceed on leave entitled?

[No. 1/30/68-LRII.]

CORRIGENDUM

New Delhi, the 1st November 1968

S.O. 4079.—In the Order of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment No. S.O. 2594, dated the 15th July, 1968, and published in the Gazette of India Part II, Section 3 Sub-section (ii) at page 3487—

in line 3, for "Messrs Bengal Coal Company, Post Office Dishergarh, District Burdwan" read "Messrs New Beerbhum Coal Company Limited, Post Office Barakar, District Burdwan".

[No. 6/20/68-LRII.]

BALWANT SINGH, Under Secy.

(Department of Labour and Employment)

New Delhi, the 2nd November 1968

S.O. 4080.—In exercise of the powers conferred by sub-section (1) of section 5 of the Mines Act, 1952 (35 of 1952), the Central Government hereby appoints Shri K. B. Mazumdar as Inspector of Mines subordinate to the Chief Inspector of Mines and makes

the following further amendment in the notification of the Government of India in the Ministry of Labour and Employment S.O. No. 531 dated the 2nd March, 1961, namely:—

In the said notification the following entry shall be added at the end namely:—
 “112. Shri K. B. Mazumdar”.

[No. 8/104/67-M.L.]

J. D. TEWARI, Under Secy

(Department of Labour and Employment)

New Delhi, the 2nd November 1968

S.O. 4081.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Hyderabad, in the industrial dispute between the employers in relation to the management of M/s. R. B. Seth Shreeram Durgaprasad and Fateh Chand Narsingdass, Sreeram-nagar, Chipurupalli Tq., Srikakulam District and their workmen, which was received by the Central Government on the 28th October, 1968

BEFORE THE INDUSTRIAL TRIBUNAL (CENTRAL) AT HYDERABAD

PRESENT:

Sri Mohammad Naimuddin, M.A., B.L., Chairman, Industrial Tribunal, Andhra Pradesh, Hyderabad.

INDUSTRIAL DISPUTE No 44 OF 1968

BETWEEN:

Workmen of M/s. R. B. Seth Shreeram Durgaprasad and Fatechand Narsingdass, Sreeram-nagar, Chipurupalli Tq. Srikakulam Dt.

AND

Employers of M/s. R. B. Seth Shreeram Durgaprasad and Fatechand Narsingdass, Sreeram-nagar, Chipurupalli Tq., Srikakulam Dt.

APPEARANCES:

Claimant Ch. Appalaswamy present in person

Sri Bansilal, Power of Attorney Agent for the Management.

AWARD

The Government of India in its Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) had, by order No. 35/9/68-LRI dated 22nd July 1968, referred this dispute to me for adjudication. The issues as per schedule annexed to the notification are these:—

- (1) Whether the dismissal of Shri Ch Appalaswamy, Driver, by the Management with effect from 16th November 1967 on grounds of alleged misconduct was justified?
- (2) If not, to what relief is the workman entitled?

2. The employers in this case are R. B. Seth Shreeram Durga Prasad and Fatechand Narsingdas. They are engaged in ore mining operations. Lorries are employed for transporting the ore. One of the lorries is A.P.S. No. 149. One of the two drivers of that lorry was Ch. Appalaswamy who is the claimant in this case. On 25th October 1967 Appalaswamy was driving the lorry during the course of duty. While so, the crown wheel and pinion of the vehicle got damaged. The Management charged Appalaswamy with “wilful act of damaging the Company’s property”. By order dated 15th November 1967 he was dismissed from service with effect from 16th November. Claimant Appalaswamy filed claim statement to say that his dismissal from service was not justified and that therefore he should be restored to employment with retrospective effect with back wages.

3. The order by which Appalaswamy was dismissed from service sets out other instances of misconduct on his part commencing from March 1963. In the counterfiled by the Management attention is drawn to the earlier instances of misconduct, their number being seven. It is stated that warnings given and punishments imposed did not help Appalaswamy to mend his ways and that “finally on 25th October, 1967 he damaged the crown pinion of A.P.S. 149 which he drove recklessly”. It is stated that as he had failed to submit an explanation in respect of the proposed punishment of dismissal, he was dismissed from

service. It is further stated that if Appalaswamy is restored to employment, it would lead to "disharmony in industrial relations and therefore there was no option except to dismiss the delinquent worker" Lastly, the Tribunal is called upon to "appreciate our dispassionate dealing with the matter.....".

4. Bansilal Gulabchand Racholia represented the Management. He is the Power of Attorney Agent for the Company. He examined himself alone as M.W.1. The claimant Appalaswamy represented himself, and examined himself alone as W.W.1. Exs. M1 to M4 were marked on the side of the Management. Any documents were not marked on the side of the claimants.

5. On a careful consideration of the evidence in the case, I would say at once that the dismissal of Appalaswamy by the Management by order dated 15th November 1967 was not justified and that therefore he should be put back into employment with retrospective effect with the back wages and attendant benefits. Admittedly, the Management did not hold any domestic enquiry in this case. Indeed, there was no enquiry of any sort. This fact is admitted by M.W.1. By Ex. M2 dated 9th November 1967 the Garage Foreman reported that the crown pinion of the lorry A.P.S. 149 "was spoiled" at Perapi road after the second trip, and requested that necessary action may be taken because the parts "were spoiled due to rash and negligent driving". Thereupon the Management served upon Appalaswamy the charge memo Ex. M3 dated 11th November 1967. It is as follows:—

It is reported that due to your rash and negligent driving on 25th October, 1967, the crown wheel and pinion of APS 149 were damaged beyond repairs. This is a wilful act of damaging the Company's property, and so, you are asked to submit your written explanation within 24 hours to this office.

The next document we have is Ex. M1 dated 15th November, 1967 by which the dismissal of Appalaswamy was ordered with effect from 16th. I have already referred to this document. Seven earlier instances of misconducts are set out therein. The opening paragraph in Ex. M1 is as follows:—

In spite of commissions of major misconducts during the last 4-5 years beginning from 1963, you were retained by the Management in service by giving you some humanistic consideration. Even after the last warning dated 4/5 July, 1965, you have been continuing to be guilty of major misconduct till the end of October, 1967, when the crown pinion of the vehicle was damaged and spoiled by you. Full and fair opportunity was given to you for mending your behaviour. But you have failed to do so.

The next paragraph in Ex. M1, that being the operative portion of the order, is this:—

Now, in view of recurrences of major misconducts committed by you till 25th October, 1967, you are dismissed from the service of the concern from 16th November, 1967.

The third and last paragraph in Ex. M1 directs Appalaswamy to receive payment of what is due to him from the Cash Office of the Company.

6. M.W.1 stated that the dismissal of Appalaswamy as per Ex. M1 was not only for the misconduct in connection with the damage to the crown wheel and pinion but also for the earlier misconducts. Even without M.W.1 saying so, the same is clear from the document itself. In fact it is seen from paragraph 1 in Ex. M1 that it was almost entirely for the reason of the earlier misconducts that Appalaswamy was dismissed from service because it is stated there that he had been continuing to be guilty of major misconducts till the end of October 1967 and that he had not learnt to mend his ways. It seems as if the damage that occurred to the crown wheel and pinion on 25th October 1967 is incidentally referred to in Ex. M1. M.W.1 admitted at the end of cross-examination that Appalaswamy had either been warned or was punished for previous misconducts. It means that whatever be the earlier instances of misconduct on the part of Appalaswamy, the subject in each such instances had been closed and given a finality either by a warning or by punishment depending upon the nature of the misconduct. He cannot once again be punished for the same. The spectre of the past misconducts that had been laid to rest by warning or punishment, cannot be resurrected for the purpose of basing the action of dismissal thereon. That being so, any reference in Ex. M1 to the earlier instances of misconduct was wholly irrelevant and unwarranted. But, on the other hand, what the Management did was to reply upon the earlier instances of misconduct to justify its action in dismissing Appalaswamy from service.

7. Excluding from consideration the earlier instances of misconduct, what remains to be seen is whether any misconduct on the part of Appalaswamy in relation to the damage to the crown wheel and pinion had been proved. Before the charge of misconduct in this respect can be said to have been brought home to Appalaswamy, the Management should prove that the damage to the crown wheel and pinion was caused by any wilful act or negligence on his part. M.W.1 himself does not know anything about this aspect of the

matter. He said in cross-examination that he was not connected with the Transport Department of the Company and that he does not know in what manner Appalaswamy is said to have caused the damage. The witness said that except the report of the Garage Foreman as per Ex. M2 there is no other appraisal in respect of the damage to the crown wheel and pinion. Turning to Ex. M2 which is the report of the Garage Foreman, we have only the statement therein that the crown wheel and pinion was spoiled on the Perapi road and that the same was owing to rash and negligent driving. It is wholly puerile to base upon the above statement of the Garage Foreman a charge of misconduct against Appalaswamy in respect of the damage to the crown wheel and pinion. It was not as if the Garage Foreman was in the vehicle at the time the damage occurred to the part in question. The best that the Garage Foreman could say was that damage had occurred to the part in question, but it was wholly incompetent on his part to proceed further and say that it was due to rash and negligent driving on the part of Appalaswamy. In that it is solely based upon the report of the Garage Foreman, the charge memo Ex. M3 would be equally puerile. It is no doubt true, and the same is admitted by W.W.1, that there was damage to the crown wheel and pinion, but it would be wholly wrong to say that that damage was "wilful act of damaging the Company's property" by Appalaswamy as stated in the charge memo Ex. M3.

8. The Company are mine owners. The lorries that carry the ore have to pass generally over rough ground with frequent jolting as a result of which the wear and tear on the parts is heavy and rapid. Appalaswamy (W.W.1) stated from the witness box that even fifteen days prior to the incident in question he had brought to the notice of the Garage Foreman that the crown wheel and pinion was giving out unusual sounds and had requested him to look into the matter. The witness said that the Garage Foreman replied that he had other work on hand and that there was no urgency about what he (Appalaswamy) had reported to him and that he could go on plying the vehicle. There was no cross-examination of this witness, and Mr. Bansilal said that there was no cross-examination. M.W.1 (Bansilal) said that he did not know if Appalaswamy had reported as above to the Garage Foreman and if the latter had replied as aforesaid. I see no reason why I should not accept the testimony of W.W.1 in this behalf. We have Ex. M4 dated 16th November 1967 which is the explanation from Appalaswamy addressed to the Management in which it is pointed out that the driver had brought to the notice of the Garage Foreman the trouble with the part in question even fifteen days prior to the damage actually occurring. Clearly, there was no fault on the part of driver Appalaswamy. Even a fortnight prior to the incident he had brought to the notice of the Garage Foreman that something would seem to be wrong with the part, viz., the crown wheel and pinion. It means that Appalaswamy was careful to see that the Company's property was not damaged by not being attended to in time. Nearly fifteen days elapsed thereafter, and meanwhile the lorry A.P.S. 149 was carrying its daily heavy loads subjecting the part, crown wheel and pinion, to further deterioration. If finally on 25th October 1967 the part crown wheel and pinion, gave way as a result of being damaged when the lorry was carrying a load, no fault will lie with the driver. It is absurd to say that there was either negligent driving or that there was any wilful act of damaging the Company's property on the part of the driver. There is absolutely no evidence, much less proof, that Appalaswamy was either guilty of negligent driving or that he was guilty of any wilful act of damaging the Company's property.

9. It is stated in the counter of the Management that Appalaswamy had failed to submit his explanation to the charge memo. W.W.1 testified that he did submit his explanation two days after he received the charge memo and that he had stated in that explanation that he had already reported about the matter to the Garage Foreman, that there was no wilful act of damaging on his part and that he had requested therein that an enquiry may be held. M.W.1 stated that he did not know if Appalaswamy had sent an explanation to the charge memo and that he did not also know if a fortnight prior to the incident in question Appalaswamy had reported to the Garage Foreman that there was something wrong with the part in question. There is Ex. M4 dated 16th November 1967 which is an explanation submitted by Appalaswamy to the Management on the day following the order of dismissal Ex. M1 dated 15th November. Appalaswamy stated in Ex. M4 that he had already submitted an explanation setting out therein all the facts, particularly the fact that fifteen days prior to the damage to the part he had intimated to the Garage Foreman about the defective nature of the part, but that however the Garage Foreman had asked him to go ahead with driving the vehicle. Ex. M1 which is the order of dismissal does not say that Appalaswamy had failed to submit an explanation to the charge memo. I have no doubt that he should have submitted his explanation. But quite clearly the Management had ignored it because it had, I have no doubt, decided to dismiss him for the reason of the earlier misconducts. As I said, there was no domestic enquiry, nor indeed an enquiry of any sort. Any statement of Appalaswamy was not received or recorded. He was not given an opportunity to explain his position at any such enquiry. It is absurd to say that the damage to the part, crown wheel and pinion, was due to his negligence or due to any wilful act on his part. I am clear that the dismissal of Appalaswamy as per order Ex. M1 dated 15th November 1967 was a *mala fide* act. That order

cannot for a moment be sustained and there can be no hesitation in holding that the dismissal of Appalaswamy was not justified.

10. In the result my finding under the two issues as per schedule annexed to the notification is that the dismissal of Ch. Appalaswamy with effect from 16th November 1967 was not justified, and it is directed that he shall be taken back into employment with retrospective effect with back wages and attendant benefits.

AWARD passed accordingly.

Given under my hand and the seal of the Tribunal, this the 18th day of October, 1968.

(Sd.) M. NAJMUDDIN, Industrial Tribunal.

APPENDIX OF EVIDENCE

Witnesses examined for

Workmen:

W.W.1: CH. APPALASWAMY.

Employers:

M.W.1: BANSILAL GULABCHAND.

Documents exhibited for Workmen

NIL

Documents exhibited for Employers

Ex. M1: Order of dismissal dated 15th November, 1967 issued by the Management to Sri Ch. Appalaswamy, claimant.

Ex. M2: Report dated 9th November, 1967 of the Garage Foreman to the Group Agent of the Company complaining that the vehicle's crown wheel and pinion was spoiled.

Ex. M3: Memo dated 11th November, 1967 of Management issued to Ch. Appalaswamy calling explanation to the spoiling of vehicle's crown wheel and pinion due to his negligence.

Ex. M4: Explanation of Ch. Appalaswamy dated 16th November, 1967 sent to the Management.

(Sd.) M. NAJMUDDIN, Industrial Tribunal.

[No. 35/9/68-LRI.]

New Delhi, the 4th November 1968

S.O. 4082.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the management of Pounia Manganese Mines of M/s. Rajaramka Brothers (Private) Limited, Post Office Tumsar and their workmen, which was received by the Central Government on the 29th October, 1968.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

Dated September 26, 1968

PRESENT:

Sri G. C. Agarwala.—*Presiding Officer.*

CASE No. CGIT/LC(R) (42) OF 1968

PARTIES:

Employers in relation to the management of Pounia Manganese Mines of M/s. Rajaramka Brothers (Private) Limited, Post Office Tumsar (Maharashtra State).

Versus

Its workmen represented through the General Secretary, Samyukta Khadan Mazdoor Sangh, P.O. Tirodi, District Balaghat (M.P.).

APPEARANCES:

For employers.—None.

For workmen.—Sri K. Nutneshwar, Secretary of the Union.

INDUSTRY: Manganese Mine.

DISTRICT: Tumsar (M.S.).

AWARD

By Notification No. 35/15/68-LRI dated 5th July, 1968, the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), Government of India, referred the following matter of dispute as stated in the schedule to the order of reference to this Tribunal, for adjudication:—

MATTER OF DISPUTE

1. Whether the action of the management of Pounia Manganese mines in terminating the services of Shri Shyamlal Banchor, Surveyor by their notice dated the 27th September, 1967 was justified?
2. If not, to what relief is the said workman entitled?

2. After the reference when no statement of claim were received notices were issued by the Tribunal to the parties to file written statements. Union's statement of claim was received and on a telephonic request on behalf of the employers on the date fixed which was 19th August, 1968, time was given to employers to file such statement of claim on 26th August, 1968. This was not done but employers application was received for time. Ordering the case to proceed *ex parte* a date had, however, been given fixing 26th September, 1968. Copy of the order was communicated to the employers. Even then, no statement of claim was received, but only a frivolous application was received requesting the Tribunal to send statement of claim which may have been filed on behalf of Sri Shyam Lal Banchor. The employers had to file their own statement of claim in the beginning. In the absence of appearance of the employers or any statement of claim there was no option but to proceed *ex parte* under Rule 22 of I.D. (Central) Rules as if the employers were present.

3. It appears that the services of the workman concerned, Sri Shyam Lal, were terminated abruptly without assigning any reason. The Secretary of the Union, Samyukta Khadan Mazdoor Sangh, Sri K. Nutneshwar, examined himself and filed notice of discharge. The notice starts by saying "after having given thorough thought to the present working and the scope for the future working, we are reluctantly constrained to take decision to terminate your services". Evidently, his services have been terminated by way of retrenchment for which the formalities of retrenchment as required by Sec. 25-F and the rules were not followed. Compensation also was not offered for the entire length of service and in the termination order only one month's notice was given. A statement of account was prepared by the management and given to worker (Ex. W/2) which shows that he had been in service from 28th November, 1956 and thus had a service in his credit of over 10 years. The action of the management consequently in terminating services of the workman was evidently unjustified.

Decision:—

The first issue under reference is held in negative. The services of Sri Shyam Lal were terminated unjustifiably with effect from 27th November, 1967. He is entitled to be reinstated with back wages together with attendant benefits. The Union will be entitled to Rs. 50/- as costs of proceedings from the management.

(Sd.) G. C. AGARWALA,
Presiding Officer.
[No. 35/15/68-LRI.]

ORDERS

New Delhi, the 1st November 1968

S.O. 4083.—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the management of Oil and Natural Gas Commission Project, Ahmedabad and their workmen in respect of the matters specified in the Schedule hereto annexed;

And whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by section 7A, and clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby constitutes an Industrial Tribunal, with Shri I. G. Thakore as Presiding Officer, with Headquarters at Ahmedabad and refers the said dispute for adjudication to the said Tribunal.

SCHEDULE

Whether Shri Hukam Singh Ladharam, Ex-Cementing Mechanic (Sr.) of Oil and Natural Gas Commission Project at Ahmedabad is entitled for re-instatement with full back wages and continuity of service? If so, what directions are essential to that end?

[No. 25/2/68-LRI.]

New Delhi, the 7th November 1968

S.O. 4084.—Whereas an industrial dispute exists between the management of Messrs. Bikaner Gypsums Limited, Bikaner (hereinafter referred to as the said Company) and their workmen represented by the Gypsum Mine Workers' Union, Bikaner (hereinafter referred to as the Union);

And whereas the said company and the Union have, by a written agreement, in pursuance of the provisions of sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), agreed to refer the said dispute to arbitration of the person mentioned therein, and a copy of the said Arbitration agreement has been forwarded to the Central Government;

Now, therefore, in pursuance of the provisions of sub-section (3) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the said arbitration agreement, which was received by it on the 17th October, 1968.

AGREEMENT

(Under Section 10-A of the Industrial Disputes Act, 1947)

BETWEEN*Name of parties:*

Representing Employers—Shri H. Choudhury, Agent,

M/s. Bikaner Gypsums Limited, Sadul Club Building, Bikaner.

Representing Workmen.—Shri V. N. Gupta, Secretary, Gypsum Mine Workers' Union, 19, Sethia Quarters, Bikaner.

It is hereby agreed between the parties to refer the following Industrial Dispute to the arbitration of Shri R. P. Bartaria, Regional Labour Commissioner (Central), Ajmer.

(i) Specific matter in dispute:

“Whether the action of the management of M/s. Bikaner Gypsums Ltd., Bikaner in superannuating Shri Lachoo, Sweeper, in their Jamsar Mines *w.e.f.* 2nd February, 1968 was legal and justified? If not, to what relief is he entitled?”

(ii) Details of the parties to the disputes including the name and address of the Establishment or Undertaking involved:

Agent, Bikaner Gypsums Limited, Bikaner and Shri Lachoo, Sweeper Jamsar Mines through the Secretary, Gypsum Mine Workers' Union as mentioned above.

(iii) Name of the Union, if any, representing the workman in question:

Gypsum Mine Workers' Union, 19, Sethia Quarters, Bikaner.

(iv) Total number of workmen employed in the Undertaking affected:

394 and Village Piece Workers about 172.

(v) Estimated number of workmen affected or likely to be affected by the dispute:

NIL.

We further agree that the decision of the Arbitrator shall be binding on us.

The Arbitrator shall make his award within a period of 3 months or within such further time as is extended by mutual agreement between us in writing. In case the

award is not made within the period aforementioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for arbitration.

Signature of the parties

1. Sd/- H. CHOUDHURY,
Representing Employer

2. Sd/- V. N. GUPTA,
Representing Workmen.

Witnesses:

1. Sd/- Illegible

2. Sd/- Illegible
13-9.

[No. 24/20/68-LRI.]

New Delhi, the 8th November 1968

S.O. 4085.—Whereas an application, under the Industrial Disputes Act, 1947 (14 of 1947), specified in the schedule hereto annexed, is pending before the Labour Court, Delhi;

And whereas for the ends of justice and convenience of parties, the said application should be disposed of without delay.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 33B of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby withdraws the proceedings in relation to the said application pending before the Labour Court, Delhi, and transfers the same to the Labour Court No. 2, Bombay constituted by the notification of the Government of India in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) No. S.O. 1970 dated the 28th May, 1968, for the disposal of the proceedings and directs that the said court shall proceed with the said application from the stage at which it is transferred and dispose of the same according to Law.

SCHEDULE

S. No.	Case No.	Name of the applicant	Remarks
1.	L.C.A. No. 522 of 1961 (3 of 1966)	Shri H. R. Dharam Singh.	..

[No. 2/29/68-LR.III.]

O. P. TALWAR, Under Secy.

(Department of Labour and Employment)

ORDER

New Delhi, the 12th November, 1968

S.O. 4086.—Whereas an industrial dispute exists between the employers in relation to the East Basuria Colliery Company Private Limited, Post Office Kusunda, District Dhanbad, and their workmen represented by the Colliery Mazdoor Sangh, Post Office Dhanbad, District Dhanbad;

And whereas the said employers and the workmen have by a written agreement, in pursuance of the provisions of sub-section (1) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), referred the said dispute to arbitration by the person specified therein, and a copy of the said arbitration agreement has been forwarded to the Central Government:

Now, therefore, in pursuance of the provisions of sub-section (3) of section 10A of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the said arbitration agreement, which was received by it on the 23rd October, 1968.

FORM-C

(See Rule 7)

AGREEMENT

(Under Sec. 10A of the Industrial Disputes Act, 1947)

BETWEEN

The Employers in relation to East Basuria Colliery of M/s. East Basuria Colliery Co. Pr. Ltd., P.O. Kusunda, Dist. Dhanbad,

AND

Their Workmen represented by the Colliery Mazdoor Sangh (INTUC), Luby Circular Road, Dhanbad.

It is hereby agreed between the parties to refer the following Industrial Dispute to the arbitration of Shri O. Venkatachalam, Chief Labour Commissioner (Central), New Delhi.

1. Specific matter in dispute:

"Whether the present economic condition of the Company permits the payment of Dearness Allowance to their workmen as per recommendations of the Coal Wage Board? If so, what should be the quantum of Dearness Allowance."

2. Details of the parties to the dispute including the name and address of the establishment or undertaking involved:

Employers of East Basuria Colliery of the East Basuria Colliery Co. Pr. Ltd., P.O. Kusunda; Dist. Dhanbad on the one hand and the workmen of the said East Basuria Colliery on the other hand.

3. Name of the Union, if any, representing the workmen in question:

Colliery Mazdoor Sangh): Regd. No. 491, Affiliated to INTUC) Luby Circular Road, Dhanbad.

4. Total Number of workmen employed in the undertaking affected:

784

5. Estimated number of workmen affected or likely to be affected by the dispute:

784

Representing the Employers
(Sd /-) H. CHANCHANI,
Secretary

The East Basuria Colliery
Co. Pr. Ltd.,

Dated: 10th October, 1968.

Witness : (1) K. A. SANGHJI

(2) H. K. BANERJI

Representing the Workmen
(Sd./-) SHANKAR BOSE,
Secretary,

Colliery Mazdoor Sangh.

[No. 2/149/68-LRII.]

HANS RAJ CHHABRA, Under Secy.

MINISTRY OF FINANCE

(Department of Economic Affairs)

New Delhi, the 2nd November 1968

S.O. 4087.—In pursuance of clause (c) of sub-section (1) of Section 21, read with clause (b) of sub-section (2) and sub-section (3) of section 25 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, in consultation with the Reserve Bank of India, hereby nominates Shri N. P. Sen, Principal, Administrative Staff College of India, Bella Vista, Hyderabad as a member of the Hyderabad Local Board of the State Bank of India in the vacancy caused by the resignation of Shri R. L. Gupta.

[No. F. 8/134/68-SB.]

New Delhi, the 6th November 1968

S.O. 4088.—In pursuance of the provisions of clause (d) of sub-section (i) of Section 6 of the Deposit Insurance Corporation Act, 1961 (47 of 1961), the Central Government, in consultation with the Reserve Bank of India, hereby re-nominates Shri Pabitra Kumar Ghosh, Senior Partner of Messrs. P. K. Ghosh and Co., P-39, Prinsep Street, Calcutta-13, as a director of the Deposit Insurance Corporation for a period of two years with effect from the 1st January, 1969.

[No. F.10/12/68-SB.]

New Delhi, the 7th November 1968

S.O. 4089.—Statement of the Affairs of the Reserve Bank of India, as on the 1st November, 1968.

BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital Paid up	5,00,00,000	Notes	52,20,48,000
		Rupee Coin	8,78,000
Reserve Fund	80,00,00,000	Small Coin	3,84,000
		Bills Purchased and Discounted :—	
National Agricultural Credit (Long Term Operations) Fund .	143,00,00,000	(a) Internal
		(b) External
		(c) Government Treasury Bills	230,65,26,000
National Agricultural Credit (Stabilisation) Fund	33,00,00,000	Balances Held Abroad*	103,20,05,000
		Investments**	177,78,60,000
National Industrial Credit (Long Term Operations) Fund	55,00,00,000	Loans and Advances to :—	
		(i) Central Government
		(ii) State Governments@	58,69,14,000
Deposits :—		Loans and Advances to :—	
(a) Government		(i) Scheduled Commercial Banks†	18,33,77,000
		(ii) State Co-operative Banks††	209,71,51,000
		(iii) Others	3,46,02,000

(i) Central Government	58,53,87,000	Loans, Advances and Investments from National Agricultural Credit (Long Term Operations) Fund:—	
(ii) State Governments	10,36,37,000	(a) Loans and Advances to :—	
(b) Banks:—		(i) State Governments	31,64,45,000
		(ii) State Co-operative Banks	14,93,61,000
(i) Scheduled Commercial Banks	148,67,82,000	(iii) Central Land Mortgage Banks
(ii) Scheduled State Co-operative Banks	6,85,09,000	(b) Investment in Central Land Mortgage Bank Debentures	8,53,61,000
		Loans and Advances from National Agricultural Credit (Stabilisation) Fund	
(iii) Non-Scheduled State Co-operative Banks	64,74,000	Loans and Advances to State Co-operative Banks	5,32,75,000
(iv) Other Banks	16,13,000	Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund:—	
(c) Others	331,71,56,000	(a) Loans and Advances to the Development Bank	0,26,71,000
Bills Payable	35,88,68,000	(b) Investment in bonds/debentures issued by the Development Bank
Other Liabilities	47,56,20,000	Other Assets	35,51,88,000
	Rupees . 956,40,46,000		Rupees . 956,40,46,000

*Includes Cash, Fixed Deposits and Short-term Securities.

**Excluding Investments from the National Agricultural Credit (Long Term Operations) Fund and the National Industrial Credit (Long Term Operations) Fund.

@Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

†Includes Rs. 9,11,08,000 advanced to scheduled commercial banks against usance bills under Section 17(4)(c) of the Reserve Bank of India Act.

††Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 6th day of November, 1968.

An Account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 1st day of November, 1968.

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department	52,20,48,000		Gold Coin and Bullion:—		
Notes in circulation	3166,32,18,000		(a) Held in India	115,89,25,000	
			(b) Held outside India	
TOTAL Notes issued		3218,52,66,000	Foreign Securities	226,42,00,000	
			TOTAL		342,31,25,000
			Rupee Coin		83,16,73,000
			Government of India Rupee Securities		2793,04,68,000
			Internal Bills of Exchange and other Commercial paper
TOTAL LIABILITIES		3218,52,66,000	TOTAL ASSETS		3218,52,66,000

(Sd.) L. K. JHA,
Governor.

[No. F. 3(3)-BC/68.]

V. SWAMINATHAN, Under Secy.

Dated the 6th day of November 1968.

(Department of Revenue and Insurance)

INCOME-TAX

New Delhi, the 29th October 1968

S.O. 4090.—In exercise of the powers conferred by clause (b) of sub-section (2) of Section 80G of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the under-mentioned temple to be a place of public worship of renown throughout the State of Madras for the purpose of the said Section.

Sri Subramaniaswamy Devasthanam, Triuttani.

[No. 108—F. No. 16/39/68-IT(AI)]

L. N. GUPTA, Under Secy

(Department of Revenue and Insurance)

INCOME-TAX

New Delhi, the 29th October, 1968

S.O. 4091.—In exercise of the powers conferred by sub-section (23) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies 'Badminton' as one of the games for the purposes of the said sub-section

[No 109—F. No. 37 4/68 II (AI)]

J. C. KALRA, Dy. Secy

(Department of Revenue and Insurance)

CORRIGENDA

INCOME-TAX

New Delhi, the 31st October 1968

S.O. 4092.—In the notification of the Government of India, in the Ministry of Finance (Department of Revenue & Insurance) No. S.O. 3759, dated the 12th September 1967 published in Part II Section 3 sub-section (ii) of the Gazette of India dated the 21st October, 1967 at pages 3949 to 4003.

(1) On page 3950—

(i) in serial No. 1, column 2 for "Anikinee lu" read "Anikineedu"

(ii) in serial No. 33, column 2 for "Sarawaji" read "Sarawji"

(2) On page 3951—

(i) in serial no. 50, column 2 for "Baidynath" read "Baidyanath"

(ii) in serial no. 62, column 2 for "Chaibasa" read "Chaitbasa"

(3) on page 3952—

(i) in serial no. 71, column 5 for "3,794 read "3,794 Indian Income

1,28,541"	1,28,541 Total World Income"
-----------	------------------------------

(ii) in serial no. 80 column 5 for "51,504 read "51,504 Indian Income

1,73,090	1,73,090 Total World Income"
----------	------------------------------

(iii) in serial no. 81, column 5 for "2,43,966 read "2,43,966 Indian Income

2,57,905"	2,57,905 Total World Income"
-----------	------------------------------

(iv) in serial no. 82, column 2 for "N.C. Road" read "M.G. Road"

(v) in serial no. 96 column 5 for "6262 read "6,262 Indian Income

1,11,670"	1,11,670 Total World Income"
-----------	------------------------------

(4) on page 3953—

- | | | |
|---|------|------------------------------|
| (i) in serial no. 101, column 5 for "44,975 | read | "44,975 Indian Income |
| 1,02,196" | | 1,02,196 Total World Income" |
| (ii) in serial no. 102, column 5 for "1,05,403 | read | "1,05,403 Indian Income |
| 1,05,403" | | 1,05,403 Total World Income" |
| (iii) in serial no. 103, column 5 for "2,200 | read | "2,200 Indian Income |
| 1,00,720" | | 1,00,720 Total World Income. |
| (iv) in serial no. 114, column 5 for "3,55,130" | read | "4,55,130" |

(5) on page 3954—

- (i) in serial no. 116, column 2 for "St. Mary in House" read "St. Mary Axe"
 (ii) in serial no. 126, column 2 for "J. B. Stedart" read "J. B. Stewart"
 (iii) in serial no. 127, column 2 for "J. B. A. Turnwull" read "J. B. A. Turnbull"
 (iv) in serial no. 132, column 3 for "1962-63" read "Individual"

(6) on page 3955—

- | | | |
|---|------|------------------------------|
| (i) in serial no. 138, column 2 for "Gammen" | read | "Gammon" |
| (ii) in serial no. 145, column 2 for "Menon" | read | "Memon" |
| (iii) in serial no. 150, column 5 for "1,49,678 | read | "1,49,678 Indian Income |
| 1,77,623" | | 1,77,623 Total World Income" |
| (iv) in serial no. 155, column 5 for "4,499 | read | "4,499 Indian Income |
| 1,00,479" | | 1,00,479 Total World Income" |

(7) on page 3956—

- | | | |
|---|------|-----------|
| (i) in serial no. 166, column 5 for "17,500 | read | "17,500 |
| 1,13,123" | | 1,23,123" |

(8) on page 3957—

- (i) in serial no. 192, column 2 for "Estate" read "Estate"
 (ii) in serial no. 192, column 5 for "1,89,729" read "1,89,739"
 (iii) in serial no. 194, column 5 for "2,10,749" read "2,10,479"
 (iv) in serial no. 199, column 4 for "1974-65" read "1964-65"
 (v) in serial no. 204, column 2 for "Napeansca, Road" read "Napean-Sea Road"

(9) on page 3958—

- (i) in serial no. 217, column 2 for "Ardeshri" read "Ardeshir"
 (ii) in serial no. 221, column 2 for "Exchange, Building" read "Exchange Building"
 (iii) in serial no. 226, column 2 for "Bhawan Chowpatty" read "Bhawan, Chowpatty"
 (iv) in serial no. 227, column 2 for "Mansion 40" read "Mansion, 40,"

(10) on page 3959—

- (i) in serial no. 248, column 4 for "1965-66" read "1964-65"
 (ii) in serial no. 260, column 2 for "Sanch Gally" read "Sancha Galli"

(11) on page 3960—

- (i) in serial no. 278, column 2 for "Geurji, Jahangir" read "Courji Jahangir"
 (ii) in serial no. 285, column 2 for "Gopal" read "Gopal"
 (iii) in serial no. 286, column 2 for "Podar" read "Peddar"
 (iv) in serial no. 290, column 2 for "Kapoor, (HUR)" read "Kapoor"
 (v) in serial no. 293, column 2 for "House Poddar" read "House, Peddar"
 (vi) in serial no. 299, column 2 for "Kanga High Court" read "Kanga, High Court"

(12) on page 3961—

- (i) in serial no. 309, column 2 for "Mahindra" read "Mahindra"
- (ii) in serial no. 309, column 2 for "Gateways" read "Gateway"
- (iii) in serial no. 333, column 2 for "Khusha-das" read "Khushaldas"
- (iv) in serial no. 334, column 2 for "Krishan" read "Krishna"

(13) on page 3962—

- (i) in serial no. 344, column 2 for "Romal" read "Pomal"
- (ii) in serial no. 349, column 2 for "Po idar" read "Peddar"

(14) on page 3963—

- (i) in serial no. 385, column 2 for "Exchange, Bldg" read "Exchange Bldg".

(15) on page 3964—

- (i) in serial no. 405, column 2 for "A. Maskati" read "A, Maskati"
- (ii) in serial no. 412, column 2 for "Galli Bombay" read "Galli, Bombay"
- (iii) in serial no. 418, column 2 for "Merchant, Manor" read "Merchant Manor"
- (iv) in serial no. 418, column 2 for "Mahin" read "Mahim"
- (v) in serial no. 419, column 2 for "Warden, Road" read "Warden Road"

(16) on page 3965—

- (i) in serial no. 428, column 2 for "Pratap Tobacco" read "Pratap, Tobacco"
- (ii) in serial no. 434, column 2 for "Mohinder" read "Mahinder"
- (iii) in serial no. 435, column 2 for "Babu-" read "Balu-"
- (iv) in serial no. 440, column 2 for "Khatan Laxmi" read "Khatau, Laxmi"
- (v) in serial no. 445, column 2 for "Darabshaw, House" read "Darabshaw House"
- (vi) in serial no. 446, column 2 for "Khatan Laxmi" read "Khatau, Laxmi"
- (vii) in serial no. 447, column 2 for "Khatan Laxmi" read "Khatau, Laxmi"

(17) on page 3966—

- (i) in serial no. 455, column 2 for "Rly," read "Rly."
- (ii) in serial no. 457, column 2 for "Holock, Larsen" read "Holock Larsen"
- (iii) in serial no. 462, column 2 for "Bombaay" read "Bombay"
- (iv) in serial no. 463, column 2 for "Mils" read "Mills"
- (v) in serial no. 468, column 2 for "Kunj Tejpal" read "Kunj, Tejpal"
- (vi) in serial no. 473, column 2 for "Chaturbhuj Tobacco" read "Chaturbhuj, Tobacco"
- (vii) in serial no. 476, column 2 for "Maheshwari Raj" read "Maheshwari, Raj"
- (viii) in serial no. 477, column 2 for "Laxmi Building, Ballards" read "Laxmi Building, Ballard"

(18) on page 3967—

- (i) in serial no. 484, column 2 for "Building Delish" read "Building, Delish"
- (ii) in serial no. 487, column 2 for "Jayantia" read "Jayantilal"
- (iii) in serial no. 488, column 5 for "1,01,575" read "1,01,675"
- (iv) in serial no. 489, column 2 for "Kalyangi" read "Kalyanjil"
- (v) in serial no. 495, column 2 for "Nandal, Haridas" read "Nandlal Haridas,"
- (vi) in serial no. 502, column 2 for "Dubash Darabshaw" read "Dubash, Darabshaw"

(19) (i) on page 3968—

- (i) in serial no. 509, column 2 for "Rasiklal, R." read "Rasiklal R."
- (ii) in serial no. 511, column 2 for "Sevantilal, Mansukhlal" read "Sevantilal Mansukhlal"
- (iii) in serial no. 512, column 2 for "Morarji Scindia" read "Morarji, Scindia"
- (iv) in serial no. 513, column 2 for "Morarji Scindia" read "Morarji, Scindia"
- (v) in serial no. 522, column 2 for "Buuilding" read "Building"
- (vi) in serial no. 526, column 4 for "1963-64" read "1964-65".

(20) on page 3969—

- (i) in serial no. 532, column 2 for "J. K." read "J. K.,"
- (ii) in serial no. 552, column 2 for "Golcha" read "Golcha,"

(21) on page 3970—

- (i) in serial no. 570, column 2 for "Roshanal" read "Roshanlal"

(22) on page 3971—

- (i) in serial no. 602, column 2 for "Jaffarali" read "Jaffrelli"
- (ii) in serial no. 610, column 2 for "Manilal, Mulchand" read "Manilal Mulchand"

(23) on page 3972—

- (i) in serial no. 634, column 2 for "Manek-Chowk, Spg." read "Manekchowk Spg."
- (ii) in serial no. 654, column 5 for "2,20,934" read "2,20,944"
- (iii) in serial no. 656, column 2 for "Ahmeda ad" read "Ahmedabad"

(24) on page 3973—

- in serial no. 674, column 2 for "Premchand Manek chowk" read "Premchand, Manek-chowk"

(25) on page 3974—

- in serial no. 715, column 2 for "Trividrum" read "Trivandrum"

(26) on page 3975—

- (i) in serial no. 728, column 5 for "1,28,817" read "1,28,617"
- (ii) in serial no. 734, column 2 for "Aruppuk ta" read "Aruppukottai"
- (iii) in serial no. 736, column 2 for "Ramaswamy India" read "Ramaswamy, India"
- (iv) in serial no. 738, column 2 for "Errabau Chetty Stree" read "Errabalu Chetty Street"
- (v) in serial no. 739, column 5 for "1,33,974" read "1,37,974"
- (vi) in serial no. 745, column 2 for "Chambero Chrome" read "Chambers, Chrome"
- (vii) in serial no. 746, column 2 for "Bajinath Express" read "Bajinath, Express"

(27) on page 3976—

- (i) in serial no. 764, column 2 for "Thangammahal" read "Thanganmahal"
- (ii) in serial no. 767, column 2 for "Mint.," read "Mint."
- (iii) in serial no. 788, column 2 for "Stensfied" read "Stensfeld"

(28) on page 3977—

- (i) in serial no. 798, column 2 for "T.V. S. P. & Sons" read "T.V.S. & Sons"
- (ii) in serial no. 801, column 2 for "Srinivaxan" read "Srinivasan"
- (iii) in serial no. 804, column 2 for "Chellagram" read "Chellaram"
- (iv) in serial no. 804, column 2 for "Madras" read "Madras"
- (v) in serial no. 806, column 2 for "Madras II" read "Madras"
- (vi) in serial no. 807, column 2 for "Shanamugham" read "Shanmugham"
- (vii) in serial no. 810, column 2 for "Madhavam" read "Madhavan"
- (viii) in serial no. 813, column 2 for "Venaravan" read "Vendarawan"

(29) on page 3978—

- (i) in serial no. 840, column 2 for "Angumuthu, read "Angumuthu
Pillai C/o Pillai C/o
Angu Vilas," Angu Vilas"

(30) on page 3979—

- (i) in serial no. 874, column 2 for "Soemitha" read "Soonitha,"
- (ii) in serial no. 885, column 2 for "C. Ramaswami" read "G. Ramaswami"
- (iii) in serial

- (31) on page 3980—
- (i) in serial no. 888, column 2 for "C/oabove" read "C/o".
 - (ii) in serial no. 890, column 2 for "Nagiah" read "Nagaiah"
 - (iii) in serial no. 904, column 2 for "Pai Mangalore" read "Pai, Mangalore"
 - (iv) in serial no. 918, column 2 for "Nagarathnama" read "Nagarathnamma"
 - (v) in serial no. 924, column 5 for "1,59,010, read "1,39,010"
 - (vi) in serial no. 925, column 2 for "Hiber Hal" read "Huber HAL"
- (32) on page 3981—
- (i) in serial no. 938, column 2 for "Dewanurappa" read "Dewansurappa"
 - (ii) in serial no. 950, column 4 for "1963-64" read "1962-63"
 - (iii) in serial no. 971, column 4 for "15,30,556" read "1,30,556"
- (33) on page 3982—
- in serial no. 984, column 2 for "Raj Tliak Road" read "Raj Tilak Road"
- (34) page 3983—
- (i) in serial no. 1033, column 5 for "1,20,653" read "1,20,539"
 - (ii) in serial no. 1035, column 2 for "Sitoram" read "Sitaram"
- (35) on page 3984—
- (i) in serial no. 1069, column 2 for "Ballaridie" read "Ballardie"
 - (ii) in serial no. 1075, column 2 for "Geonka" read "Goenka"
 - (iii) in serial no. 1077, column 4 for "1960-61" read "1964-65"
- (36) on page 3985—
- (i) in serial no. 1078, column 4 for "1960-61" read "1964-65"
 - (ii) in serial no. 1097, column 4 for "1964-95" read "1964-65"
- (37) on page 3987—
- in serial no. 1138 column 2 for "Keem" read "Keen"
- (38) on page 3988—
- in serial no. 1166, column 2 for "Assocaited" read "Associated"
- (39) on page 3989—
- (i) in serial no. 1206, column 2 for "Gillinders" read "Gillanders"
 - (ii) in serial no. 1211 column 4 and 5 delete "1964-65" and "1,36,141"
 - (iii) in serial no. 1212, column 5 for "2,36,141" read "1,36,141"
 - (iv) in serial no. 1220, column 2 for "Dt." read "Dr."
- (40) on page 3990—
- in serial no. 1240 column 2 for "Benoy Bhushan, Mazumdar" read "Benoy Bhushan Mazumdar"
- (41) on page 3991—
- (i) in serial no. 1284, column 2 for "Dqlhousie" read "Dalhousie"
 - (ii) in serial no. 1287, column 5 for "10,10,729" read "19,10,729"
 - (iii) below serial no. 1292, and above the table for "Financial Year" read "Financial Year 1964-65"
- (42) on page 3992—
- (i) after serial no. 9 for "Bombay City" read "Bombay City—1"
 - (ii) in serial no. 19 column 2 for "Gilender" read "Gillender"
 - (iii) in serial no. 19 column 2 for "N. S" read "N. S. Road"
 - (iv) in serial no. 24, column 2 for "Shrree" read "Shree"
 - (v) in serial no. 24, column 5 for "10,36,543" read "10,37,543"
 - (vi) in serial no. 28, column 2 for "Corn Proucts Co" read "Corn Products Co"
- (43) on page 3993—
- in serial no. 47, column 2 for "12-A Forcehore" read "12A Foreshore"

- (44) on page 3995—
 (i) in serial no. 101, column 2 for "India Tube Mills Metal Industries Pvt." read "India Tube Mills & Metal Industries Pvt."
 (ii) in serial no. 103, column 2 for "Applo Assurance" read "Appollo"
- (45) on page 3996—
 (i) in serial no. 121, column 2 for "Assurance" read "Assurance"
 (ii) in serial no. 121, column 5 for "3,73,380" read "23,73,380"
 (iii) in serial no. 127, column 2 for "Sciendia House" read "Scindia House"
- (46) on page 3998—
 (i) in serial no. 162, column 2 for "F. Parkins Ltd" read "F. Perkins Ltd."
 (ii) in serial no. 163, for "Ferner Cookil" read "Feener Cockli"
 (iii) in serial no. 166, column 2 for "Ferguson" read "Fergusson"
 (iv) in serial no. 166, column 2 for "Roses" read "Ross"
 (v) in serial no. 167, column 2 for "Meetur" read "Mettur"
- (47) on page 3999—
 (i) in serial no. 204, column 3 for "Col" read "Co."
 (ii) in serial no. 207, column 2 for "Woolen" read "Woollen"
- (48) on page 4000—
 in serial no. 234, column 2 for "Row Extension" read "Row"
- (49) on page 4001—
 (i) in serial no. 243, column 4 for "1926-63" read "1962-63"
 (ii) in serial no. 257, column 2 for "Caicutta" read "Calcutta"
 (iii) in serial no. 265, column 2 for "Manufactuers" read "Manufacturers"
- (50) on page 4002—
 (i) in serial no. 268, column 2 for "Sexby" read "Saxby"
 (ii) in serial no. 268, column 5 for "15,68,368" read "15,58,368"
 (iii) in serial no. 273, column 2 for "Brook" read "Brooke"
 (iv) in serial no. 275, column 2 for "Gamboodih" read "Camboodih"
 (v) in serial no. 281, column 2 for "Kettle-well" read "Kettlewell"
 (vi) in serial no. 281, column 2 for "Cacutta" read "Calcutta"
- (51) on page 4003—
 in serial no. 313, column 5 for "13,59,35" read "13,59,458"

[No. F. 1/4/68/IT(B)]

New Delhi, the 16th November 1968

S.O. 4093.—In the notification of the Government of India, in the Ministry of Finance (Department of Revenue and Insurance) No. S.O. 3475, dated the 4th September, 1967 published at pages 3601 to 3641, in Part II Section 3, sub-section (ii) of the Gazette of India, dated the 30th September, 1967,—

- (1) on page 3602—
 (i) in serial no. 9, column 2 for "Mechani" read "Machani"
 (ii) in serial no. 10, column 4 for "Dg" read "DO"
 (iii) in serial no. 15, column 2 for "Princes" read "Princess"
 (iv) in serial no. 20, column 2 for "Pops" read "Prop."
 (v) in serial no. 38, column 2 for "Dhatikidih" read "Dhatkidih"
- (2) on page 3603—
 (i) in serial no. 47, column 2 for "Dinashaw" read "Dinshaw"
 (ii) in serial no. 55, column 2 for "Bathubal" read "Babulal"

- (iii) in serial no. 58, column 2 for "Seita" read "Seity"
 - (iv) in serial no. 62, column 2 for "Ldt" read "Ltd"
 - (v) in serial no. 62, column 2 for "P.H." read "P.M."
 - (vi) in serial no. 68, column 2 for "Nenabhai" read "Nanabhai"
 - (vii) in serial no. 71, column 2 for "Gregaon" read "Gregson"
- (3) on page 3604—
- (i) in serial no. 79, column 2 for "City Bombay" read "City Bank"
 - (ii) in serial no. 91, column 2 for "Pawcell" read "Pawell"
 - (iii) in serial no. 93, column 5 for "1,27,933" read "1,26,933"
 - (iv) in serial no. 108, column 5 for "2,19,40" read "2,19,140"
- (4) on page 3605—
- (i) in serial no. 114, column 2 for "Backbeny" read "Backbey"
 - (ii) in serial no. 115, column 2 for "Fazalbhay" read "Fazalbhoj"
 - (iii) in serial no. 119, column 2 for "Asbastos" read "Asbestos"
- (5) on page 3606—
- (i) in serial no. 150, column 2 for "Javri" read "Javerji"
 - (ii) in serial no. 171, column 2 for "Tire" read "Tyre"
- (6) on page 3607—
- (i) in serial no. 186, column 2 for "Dahaninkar" read "Dahanukar"
 - (ii) in serial no. 210, column 2 for "Radha Kali" read "Radha Galli"
 - (iii) in serial no. 312, column 5 for "9,26,184" read "9,36,184"
- (7) on page 3608—
- (i) in serial no. 220, column 2 for "Mahadrai" read "Madhassai"
 - (ii) in serial no. 224, column 2 for "Tannen" read "Tannan"
 - (iii) in serial no. 224, column 2 for "Tanen" read "Tannan"
 - (iv) in serial no. 225, column 2 for "Kalabadevi" read "Kalbadevi"
 - (v) in serial no. 233, column 2 for "Mew" read "New"
 - (vi) in serial no. 243, column 2 for "Dinshav" read "Dinshaw"
 - (vii) in serial no. 244, column 2 for "Amaniklal" read "Aamniklal"
- (8) on page 3609—
- (i) in serial no. 251, column 2 for "Hurudasmal" read "Gurudasmal"
 - (ii) in serial no. 262, column 2 for "Come" read "Cama"
 - (iii) in serial no. 267, column 2 for "Jamshedj" read "Jamshedji"
 - (iv) in serial no. 272, column 2 for "Lackman Dass" read "Lachman Das"
- (9) on page 3610—
- (i) in serial no. 297, column 2 for "Kalabadevi" read "Kalbadevi"
 - (ii) in serial no. 308, column 2 for "Pate" read "Patel"
 - (iii) in serial no. 320, column 2 for "Navaibai" read "Navaibai"
- (10) on page 3611—
- (i) in serial no. 325, column 2 for "Windsox" read "Windsox"
 - (ii) in serial no. 326, column 2 for "Rhakar Das" read "Thakar Das"
 - (iii) in serial no. 354, column 2 for "Sarjo" read "Saroj"
- (11) on page 3612—
- in serial no. 378, column 2 for "Vishamber" read "Bishamber"
- (12) on page 3613—
- (i) in serial no. 397, column 2 for "Darbshow" read "Darabshaw"
 - (ii) in serial no. 416, column 2 for "Dalalsile" read "Delisle"

(13) on page 3614—

- (i) in serial no. 429, column 2 for "Rajpal" read "Tejpal"
- (ii) in serial no. 436, column 2 for "Carsandas" read "Carsondas"
- (iii) in serial no. 438, column 2 for "Kainla" read "Kanila"
- (iv) in serial no. 442, column 2 for "Bimladebi" read "Bimladevi"
- (v) in serial no. 442, column 2 for "Ready" read "Reay"
- (vi) in serial no. 443, column 2 for "Ready" read "Reay"
- (vii) in serial no. 447, column 2 for "Sharamsee" read "Dharamsee"

(14) on page 3615—

- (i) in serial no. 459, column 2 for "New Queens" read "New Queens Road"
- (ii) in serial no. 478, column 3 insert "Indl"
- (iii) in serial no. 480, column 2 for "635-36" read "535-36"

(15) on page 3616—

- (i) in serial no. 490, column 2 for "Mis." read "Mrs"
- (ii) in serial no. 490, column 3 insert "Indl"
- (iii) in serial no. 495, column 2 for "Singhi" read "Sanghi"
- (iv) in serial no. 496, column 2 for "Notilal" read "Motilal"
- (v) in serial no. 502, column 2 for "Bhundergi" read "Bhuderji"
- (vi) in serial no. 518, column 2 for "Jadeia" read "Jadeja"
- (vii) in serial no. 519, column 2 for "Gohejl" read "Gohel"
- (viii) in serial no. 523, column 3 for "Gohejl" read "Indl"
- (ix) in serial no. 530, column 2 for "Darwaja" read "Lal Darwaja A'bad"

(16) on page 3617—

- (i) in serial no. 534, column 2 for "Gorhandbhai" read "Gordhanbha"
- (ii) in serial no. 551, column 2 for "HUI" read "Indl"
- (iii) in serial no. 554, column 4 insert "62-63"

(17) on page 3618—

- (i) in serial no. 578 for the figure in column 4 read "3,26,762"
- (ii) in serial no. 583, column 3 for "," read ","
- (iii) in serial no. 590, column 2 for "Ahmedzbad" read "Ahmedabad"

(18) on page 3619—

- in serial no. 620, column 2 for "Verma" read "Varma"

(19) on page 3621—

- in serial no. 706, column 2 for "Nagrcoil" read "Nagercoil"

(20) on page 3623—

- (i) in serial no. 789, column 2 for "Venkatamanalu" read "Venkatamanjalu"
- (ii) in serial no. 789, column 2 for "Chettiar" read "Chattiar"
- (iii) in serial no. 793, column 2 for "M.C. uSndarajan" read "M. C. Sundarajan"
- (iv) in serial no. 798, column 2 for "Denagere" read "Devanageri"
- (v) in serial no. 815, column 5 for "1,25,671" read "1,25,678"

(21) on page 3624—

- (i) in serial no. 817, column 3 for "Inp" read "Ind"
- (ii) in serial no. 843, column 2 for "States, Picture House" read "States Picture House"

(22) on page 3625—

- (i) Under heading "Punjab" Delete " S/Shri "
- (ii) in serial no. 874, column 2 for "Yamunagar" read "Yamunanagar"
- (iii) in serial no. 885, column 2 for "Kutbiher" read "Kutlehr"

- (iv) in serial no. 886, column 2 for "Meeron" read "Meerana"
- (v) in serial no. 886, column 5 for "7,08,042" read "1,08,042"
- (vi) in serial no. 889, column 2 for "New Judge" read "Now Judge"
- (vii) in serial no. 893, column 2 for "Tansusukh Rai" read "Tansukh Rai"
- (23) on page 3626—
 - in serial no. 916, column 2 for "Silapur" read "Sitapur"
- (24) on page 3627—
 - (i) in serial no. 945, column 5 for "1,50,770" read "1,50,777"
 - (ii) in serial no. 955, column 2 for "Triben" read "Tribeni"
- (25) on page 3628—
 - (i) in serial no. 970, column 2 for "Ripson" read "Ripon"
 - (ii) in serial no. 990, column 2 for "Burpur" read "Burnpur"
- (26) on page 3629—
 - (i) in the top line giving the column numbers, in the relevant column insert "5".
 - (ii) in serial no. 996, column 2 for "Jarlina" read "Jarline"
 - (iii) in serial no. 1019, column 5 insert "1,05,431"
 - (iv) in serial no. 1026, column 2 for "Gurusedey" read "Gurusadey"
- (27) on page 3630—
 - (i) in serial no. 1039, column 2 for "I. H. Kirk" read "J. H. Krik"
 - (ii) in serial no. 1063, column 4 for "1946-57" read "1946-47"
 - (iii) in serial no. 1065, column 2 for "8/9 Birla Alipore Road" read "8/9 Alipore Road"
- (28) on page 3631—
 - (i) in serial no. 1085, column 5 for "5,45,922" read "6,45,922"
 - (ii) in serial no. 1095, column 2 for "Senclair" read "Sinclair"
- (29) on page 3632—
 - (i) in serial no. 1112, column 2 for "Holander" read "Hollander"
 - (ii) in serial no. 1113, column 3 for "N.R." read "N.R. Ind."
 - (iii) in serial no. 1116, column 3 for "N. R." read "N.R. Ind."
 - (iv) in serial no. 1123, column 2 for "6t Lyons Range" read "6 Lyons Range"
- (30) on page 3634—
 - (i) in serial no. 23, column 2 for "Wandy" read "Wandley"
 - (ii) in serial no. 45, column 2 for "Surnid" read "Sahrid"
- (31) on page 3635—
 - (i) in serial no. 55, column 2 for "Carena" read "Carona"
 - (ii) in serial no. 59, column 2 for "Batard Estate" read "Ballard Estate"
 - (iii) after serial no. 64 for the heading "Bombay City 222" read "Bombay City III"
 - (iv) in serial no. 65 column 2 for "Atie" read "Alic"
 - (v) in serial no. 66, column 2 for "Castel" read "Caole"
 - (vi) in serial no. 68, column 2 for "Kernani" read "Kermani"
- (32) on page 3637—
 - (i) in serial no. 144, column 2 for "and Line Beach" read "2nd Line Beach"
 - (ii) in serial no. 147, column 3 for " " read "Co"
- (33) on page 3638—
 - (i) in serial no. 162, column 2 for "Simnoli" read "Simbhaoli"
 - (ii) in serial no. 170, column 2 for "Bairawato" read "Braithwaite"
- (34) on page 3639—
 - (i) in serial no. 188, column 3 insert "N.R. Co."
 - (ii) in serial no. 189, column 3 for "N.R. Co" read "Co."

(35) on page 364c—

- (i) in serial no. 224, column 2 for "43/45" read "43/46"
- (ii) in serial no. 232, column 3 insert " "
- (iii) in serial no. 232, column 5 for "3241,424" read "44,12,243"
- (iv) in serial no. 242, column 2 for "Waldia" read "Waldie"
- (v) in serial no. 244, column 2 for "Garesham" read "Gresham"

(36) on page 3641—

- (i) in serial no. 251, column 2 for "Road" read "Row"
- (ii) in serial no. 253, column 3 for "N.R." read "N. R. Co."

[No. 1/7/65-IT_(B)].

S.O. 4094.—In the notification of the Government of India in the Ministry of Finance Department of Revenue and Insurance) No. S.O. 3476, dated the 4th September, 1967 published at pages 3641 to 3691, in Part II, Section 3, sub-section (ii) of the Gazette of India, dated the 30th September 1967,—

(1) on page 3643—

- (i) in serial no. 38, column 2 for "Lakhimupur" read "Lakhimpur"
- (ii) in serial no. 43, column 2 for "Nandlal" read "Nandalal"
- (iii) in serial no. 48, column 2 for "Saharasa" read "Sasasmusa"
- (iv) in serial no. 63, column 2 for "Vershenel" read "Vershnei"
- (v) in serial no. 65, column 2 for "Gider" read "Gilder"

(2) on page 3644—

in serial no. 73, column 2 for "Bowyer" read "R. Bowyer"

(3) on page 3647—

- (i) in serial no. 163, column 2 for "India Pvt." read "India"
- (ii) in serial no. 166, column 2 for "Geote" read "Geite"]
- (iii) in serial no. 174, column 2 for "Jyotibens Patel" read "Jyotiben S. Patel"
- (iv) in serial no. 175, column 2 for "Phennatic" read "Pneumatic"
- (v) in serial no. 176, column 2 for "Makefield" read "Wakefield"
- (vi) in serial no. 180, column 2 for "Gotiver" read "Grover"
- (vii) in serial no. 184, column 2 for "SK. Menon" read "Sheikh Menon"

(4) on page 3648—

- (i) in serial no. 187, columns 4 and 5, delete "DO" and "1,45,374"
- (ii) in serial no. 196, column 2 for "Rayley" read "Boyley"
- (iii) in serial no. 203, column 2 for "Sabha" read "Sabah"
- (iv) in serial no. 204, column 2 for "Dive" read "Drive"

(5) on page 3649—

- (i) in serial no. 224, column 2 for "Calten" read "Caltex"

(6) on page 3650—

- (i) in serial no. 269, column 2 for "Arrindrosad" read "Arvindprosad"
- (ii) in serial no. 270, column 2 for "Chesburgugh" read "Chesborough"
- (iii) in serial no. 278, column 2 for "Rayan" read "Ryan"

(7) on page 3651—

- (i) in serial no. 300, column 2 for "Dubas" read "Dubash"
- (ii) in serial no. 309, column 2 for "Tamarnd Lane" read "Tamarind Lane"
- (iii) in serial no. 317, column 2 for "Suroff" read "Shroff"

(8) on page 3652—

- (i) in serial no. 334, column 2 for "Linyin" read "Linyin"

(9) on page 3655—

- (i) in serial no. 437, column 2 for "Ramchand Ochbaalal" read "Rameshchand Ochhavalal"
- (ii) in serial no. 456, column 2 for "Sawdeshi" read "Swadeshi"

- (23) on page 3670
 (i) in serial no. 979, column 2 for "Dodid" read "Dodd"
 (ii) in serial no. 1004, column 2 for "Shanmugha" read "Shanmugham"
- (24) on page 3672—
 (i) in serial no. 1059, column 2 for "Barasimhara" read "Narasimhara"
 (ii) in serial no. 1089, column 2 for "Sangal" read "Sanga"
- (25) on page 3673—
 (i) in serial no. 1103, column 2 for "Mehara" read "Mehra"
 (ii) in serial no. 1108, column 2 for "Menra" read "Mehra"
 (iii) in serial no. 1119, column 2 for "Ratala" read "Batala"
- (26) on page 3674—
 (i) in serial no. 1138, column 2 for "Nawanganj" read "Nawalgarj"
 (ii) in serial no. 1140, column 2 for "Kundera" read "Mundera"
 (iii) in serial no. 1146, column 5 for "1,34,411" read "1,33,411"
 (iv) in serial no. 1170, column 2 for "Bareilly" read "Bareilly"
- (27) on page 3676—
 (i) in serial no. 1212, column 5 for "1,22,687" read "1,22,667"
 (ii) in serial no. 1218, column 2 for "C/o" read "A/o"
 (iii) in serial no. 1226, column 4 for "DO" read "1963-64"
 (iv) in serial no. 1228, column 5 insert "2,78,420"
- (28) on page 3678—
 in serial no. 1292, column 2 for "Illa" read "Ila"
- (29) on page 3679—
 (i) after serial no. 1315, column 1 for "116" read "1316"
 (ii) in serial no. 1316, column 2 for "Centhol" read "Benthol"
- (30) on page 3681—
 in serial no. 1368, column 2 for "Cham" read "Chand"
- (31) on page 3682—
 in serial no. 29, column 2 for "Year" read "Veer"
- (32) on page 3684—
 (i) in serial no. 74, column 2 for "Victorial" read "Victoria"
 (ii) in serial no. 91, column 2 for "(Export)" read "(Export) Ltd."
- (33) on page 3686—
 (i) in serial no. 132 column 2 for "Udyoemandal" read "Udyogmandal"
 (ii) in serial no. 156, column 2 for "New Delhi" read "New Jail Road"
- (34) on page 3687—
 in serial no. 192, column 2 for "Pollibata" read "Pollibetta"
- (35) on page 3688—
 in serial no. 201, column 2 for "Breveries Ltd., Bangalore (P)" read "Breweries Ltd., Bangalore"
- (36) on page 3689—
 (i) in serial no. 221, column 2 for "Warram" read "Warran"
 (ii) in serial no. 235, column 2 for "Chit" read "Cl v."
 (iii) in serial no. 257, column 2 for "Lenoleums" read "Linoleums"
- (37) on page 3690—
 (i) in serial no. 272, column 2 for "RD" read "L'd."
 (ii) in serial no. 283, columns 4 and 5 for "1962-63 58,47,380,
 read "1962-63 58,47,380
 1963-64 31,13,378"

[No. 1/7/65—II(A)]

R. D. SAXENA, Dy. Secy.

वित्त मंत्रालय

(अर्थ विभाग)

(शेयर बाजार प्रभाग)

शुद्धिपत्र

नई दिल्ली, 11 नवम्बर 1968

सांविधिक आदेश 4095—दिनांक 28 सितम्बर 1968 के भारत के राजपत्र के भाग II—खण्ड 3—उपखण्ड (II) के पृष्ठ 4561 पर प्रकाशित दिनांक 7 सितम्बर 1968 के सांविधिक आदेश संख्या 3445 में वित्त मंत्रालय के अर्थ विभाग से सम्बद्ध भारत सरकार की अधिसूचना के हिन्दी रूपान्तर में “बायदा बाजार प्रभाग” के स्थान पर “शेयर बाजार प्रभाग” पढ़िए।

[सं० एफ० 1/6/एस० ई०/68]

एन० सी० मैत्र,

संयुक्त निदेशक (एस०ई०)।

